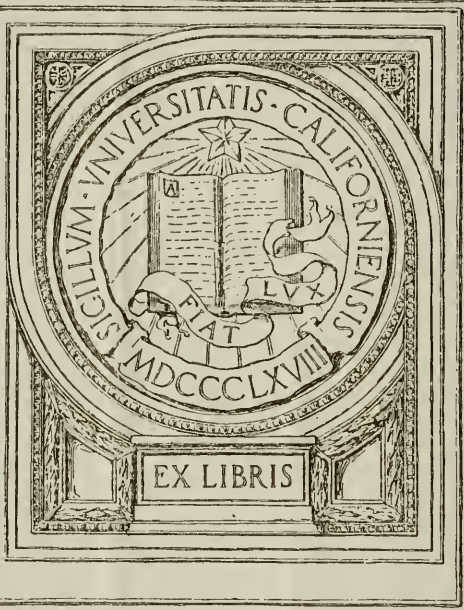

REPORT OF COMMISSION

APPOINTED BY

GOVERNOR M. E. HAY

—TO—

Investigate the Problems

—OF—

INDUSTRIAL ACCIDENTS

—AND TO—

DRAFT A BILL ON THE SUBJECT

—OF—

Employes' Compensation

—TO BE—

Submitted to the 1911 Session of the Washington Legislature

PAUL E. PAGE, Chairman; F. B. HUBBARD, JAMES ANDERSON, PETER HENRETTY; J. H. WALLACE, E. S. JONES, J. A. FALCONER, J. P. MCGOLDRICK, CLARENCE PARKER, GEORGE VON ESCHEN. HAROLD PRESTON, Attorney for the Commission.

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REPORT.

TACOMA, WASHINGTON, December 30, 1910.

TO THE HONORABLE M. E. HAY, *Governor of Washington:*

The employers' liability commission appointed by you to investigate the problems of industrial accidents and draft a bill upon the subject for submission to the legislature at its next session, respectfully report as follows:

The commission consists of the following: Employers, Paul E. Page of Buckley, F. B. Hubbard of Centralia, James Anderson of Seattle, J. A. Falconer of Everett, and J. P. McGoldrick of Spokane; employes, P. Henretty of Cle Elum, E. S. Jones of Ellensburg, Clarence Parker of Tacoma, J. H. Wallace of Seattle, and George Von Eschen of Spokane.

We organized at the city of Tacoma on the 29th day of September, 1910, by electing Mr. Page chairman, and Mr. Henretty secretary, and appointed Mr. Harold Preston of Seattle our attorney. We have had numerous meetings and gathered such statistics of industrial accidents as were available, but found it impossible to obtain comprehensive statistics of any industry in the state except that of coal mining. It took us little time, however, to reach an agreement with the Illinois commission, that the present system of law in relation to the matter is "unjust, haphazard, inadequate and wasteful, the cause of enormous suffering, of much disrespect for law, and of a badly distributed burden upon society"; and with the New York commission, that "present conditions as to employers' liability are intolerable"; and with Governor Hughes of New York, that "our present methods are wasteful and result in injustice. * * * As a result the workmen do not receive proper compensation, and employers pay large amounts that do not reach them"; and with President Roosevelt, in urging upon Congress the adoption of the compensation system for workmen employed by the government, that "it is a matter of humiliation to the nation that there should not be on our statute books provision to meet and partially to atone for cruel misfortune when it comes upon a man, through no fault of his own, while faithfully serving the public. In no other prominent industrial country in the world could such gross injustice occur; for almost all civilized nations have enacted legislation embodying the complete recognition of the principle which places the entire trade risk for industrial accident (excluding of course accidents due to the wilful misconduct of the employe) on the industry as represented by the employer, which in this case is the government. * * * The same broad principle which should apply to the government should ultimately be

made applicable to all private employers. Where the nation has the power it should enact laws to this effect. Where the states alone have the power they should enact the laws."

The principle of sure compensation to the injured workman, regardless of questions of negligence, has obtained for years in every country of continental Europe. It has there given complete satisfaction and proved beneficial to employer and employe alike, and has removed one of the chief causes of friction and animosity between employer and employe.

When first enacted in Germany, twenty-five years ago, it was feared that it would prove a handicap to the employer in his competition with the employers of other countries. The remarkable strides made by German industry since that time has proven that the apprehension was unfounded; and the commission are of the opinion that the industries of Washington, in their competition with like industries in other states and countries, will be benefited rather than harmed if that principle shall be adopted into the legislation of Washington.

The subject is one of present intense interest in many parts of the United States. Commissions like our commission have been constituted in Massachusetts, New York, Illinois, Minnesota and Wisconsin, and some of them are still at work upon the problem. They have been hampered in their work by provisions of their constitutions not contained in the constitution of Washington, in which respect we consider the State of Washington to be fortunate, in that the way seems open here to enact into law the true principle which should govern the relations between employers and employes engaged in hazardous occupations.

We submit herewith a proposed bill which we have prepared, and which has our unanimous approval. Most of the commissions of other states have found it necessary from a legal standpoint to leave the applicability of the act to the option of the workman; that is to say, he is at liberty to take under the act or to reject the act and bring his action at law against his employer; yet they all agree that the only justification for imposing absolute liability upon the employer in all cases, regardless of the question of negligence, is to, on the other hand, take away from the employe the right to sue at law. They have devised plans, the object of which is to leave the option in theory in the hope that it will not obtain in practice. The bill herewith submitted withdraws the matter from the domain of private controversy and from the jurisdiction of the courts, provides funds out of which every workman injured, and the family of every workman killed in the course of industrial employment, receive a measure of compensation, regardless of the question who was to blame for the accident, and provides that this shall be the workman's sole remedy, and the contribution which the employer makes to the funds his sole financial responsibility.

The problem of extremest difficulty with which we have been confronted has been the fixing of the rates of contribution. Most em-

ployers in the state today procure what is known as employers' liability policies, for which they pay a certain percentage of their payroll, and which furnishes them the agreement of the insurer to indemnify them against all demands made against them by or on account of employes injured in their establishments.

It is reasonably well established by statistics that of the sums of money paid by the employer for employers' liability insurance, little, if any, in excess of twenty per cent thereof, reaches the injured employe or his family. In the State of Washington the sum paid last year for such insurance was over six hundred thousand dollars, of which nearly five hundred thousand dollars was absolutely wasted. Insurance men agree that of such insurance sixty per cent. of the premiums is expended in expenses of solicitation, office expenses, expenses of adjustment and profits to stockholders. In accident insurance it is estimated that fifty per cent. of the premiums paid is consumed in the same way.

It is estimated that one accident out of eleven is prosecuted in the courts, and that one out of ten prosecuted is successful. The expenses to the state and the several counties of the state, in providing the court machinery for trying out these contests is enormous. In its limited time the commission has not been able to ascertain from the court records the precise size of that item of cost; it is variously estimated at from one hundred thousand dollars to two hundred thousand dollars per year. Whatever the amount, it is all waste and furnishes, in the opinion of the commission, ample justification for the provision in the proposed bill, that the state appropriate out of its treasury one hundred and fifty thousand dollars to defray the expenses of the department for the first sixteen months of operation under the act if the act shall be passed by the coming legislature; that is to say, from October first (the date on which it is proposed the act shall become operative between employer and employe) and the time fixed by law for the next session of the legislature.

If other justification for such an appropriation were needed from a financial standpoint, it is only necessary to consider the financial burden from which the counties of the state will be relieved by a law which will provide an ensured living for injured workmen, their widows and children, thereby avoiding the possibility of their becoming public charges or worse.

The Illinois commission in its investigation discovered that in three and one-half years the county of Cook alone cared for one hundred and forty-seven such families, numbering five hundred and fifty-eight individuals. In seventy-two of these families the wage-earner had been killed; in seventy-five merely injured. Of the entire one hundred and forty-seven families only forty-three had any wage income whatever. The forty-three families averaged a weekly income of $6.88. The entire group had an average income of fifty cents per week for each person. Of these families seventy-two were native Americans. The Illinois commission "found painfully instructive the stories of how the women

and children in these one hundred and forty-seven families met the load thus thrust upon them."

On the other side of the account we hear frequently of large verdicts being rendered in favor of the plaintiff in such cases; yet investigation has proven that approximately five hundred dollars is the average compensation received under the existing system for the accidental death of an industrial workman. When substantial recoveries are secured, they are secured only at the end of years of litigation. The remedy under present laws is truly uncertain. The doctrine of Magna Charta was that one for an injury to his person should have a sure, speedy and adequate remedy in the courts. In the administration of the common law system the remedy has proven uncertain, inadequate and anything but speedy. Yet it is said that the common law has become so engrafted into the institutions of the states of America as to stand in the way of the introduction of the workmen's compensation system under which the workman's remedy will be certain, speedy and reasonably adequate.

Other commissions have seemed to favor the placing of the liability directly upon the employer; that is to say, they favor fixing a schedule of compensation to injured workmen and their families, and providing that in each case each employer shall pay the stated sum to the injured employe, or, in case of his death, to his familiy, and it is expected (in fact it is the case in New York, where an optional statute was this year enacted) that the employers will then write employers' liability insurance to protect them in such cases, and thereby distribute the burden.

This plan has not met with the favor of your commission for the reason that it still retains the elements of waste and litigation. It seems to us better, for both employer and employe, that all the money that the employers pay out on account of such cases shall, every cent of it, go to the injured workman.

In adjusting the schedules of contribution we believe that we have erred, if at all, on the side of safety; in other words, that the schedules of premiums fixed in the proposed act will carry the schedule of compensation fixed therein, and probably more. If the act shall be adopted, the commission will keep books with every industry and every class of industry, and, after sixteen months of such bookkeeping, will be able to determine precisely whether any industry has contributed more or less than was required for its accidents during that year, and the proposed act provides for the refund of sums paid in excess. So that if the rates named in the bill appear high to any employer or class of employers, they should remember that if proved too high, the excess is only a temporary advancement of money. By means of such bookkeeping the commission will also be able to inform the succeeding legislature of the exact cost of the schedule of compensation to each industry and class of industries. By that means any inequalities discovered in the laying of the burden of contribution will be corrected for future application, and that with increasing accuracy as the years of

operation under the act increase; so that, while some employers of the state may feel that the rate of premium fixed in the act is large in their cases, yet it is hoped that the question will be first viewed in its humanitarian aspect and from the standpoint of the public good, and that it will be borne in mind that the rates named in the proposed bill may be changed after sixteen months of operation and demonstration, and that, in the first instance, employers can well afford to pay a rate possibly seeming too large, in view of the fact that any error or inequality will be so soon corrected, since by doing so they may be able to obtain the enactment of the proposed legislation, the effect of which will be, not only to relieve them of the load of litigation and expense which they are now carrying in that connection, and secure to their workmen and the families of their workmen sure provision in cases of accidents, but also to restore between employer and workman a feeling of friendship and co-operation which is certain to be reflected in the yearly trial balance.

In closing, the commission wish to gratefully acknowledeg assistance rendered them by numerous citizens, and especially Govnor Teats and Edwin F. Masterson of the Tacoma bar, and George W. Rourke of the Seattle bar.

The legal report of the attorney to the commission is submitted herewith.

Respectfully,

PAUL E. PAGE,
E. S. JONES,
J. A. FALCONER,
J. P. MCGOLDRICK,
CLARENCE PARKER,
JAS. ANDERSON,
GEO. VON ESCHEN,
F. B. HUBBARD,
PETER HENRETTY,
J. H. WALLACE.

COMPENSATION FOR INJURED WORKMEN EMPLOYED IN THE INDUSTRIES OF THE STATE.

AN ACT creating the Industrial Insurance Department, making an appropriation for its administration, providing for the creation and disbursement of funds for the compensation and care of workmen injured in hazardous employment, providing penalties for the non-observance of regulations for the prevention of such injuries and for violations of its provisions, asserting and exercising the police power in such cases, and, except in certain specified cases, abolishing the doctrine of negligence as a ground for recovery of damages against employers, and depriving the courts of jurisdiction of such controversies.

Be It Enacted by the Legislature of the State of Washington:

SECTION 1. *Declaration of Police Power.*

The common law system governing the remedy of workman against employer for injuries received in hazardous work does not consist with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost to the employer has reached the workman and that little only at large expense to the public. The remedy of the workman has become uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage-workers. The State of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extra hazardous work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this act provided.

SEC. 2. *Enumeration of Extra Hazardous Works.*

There is hazard in all employment, but certain employments have come to be, and to be recognized as being inherently and constantly dangerous. This act is intended to apply to all such inherently hazardous works and occupations, and it is the purpose to embrace all of them, which are within the legislative jurisdiction of the state, in the following enumeration, and they are intended to be embraced within the term "extra hazardous" wherever used in this act, to-wit:

Factories, mills and workshops where machinery is used; printing, electrotyping, photo-engraving and stereotyping plants where machinery is used, foundries, blast furnaces, mines, wells, gas works, water works, reduction works, breweries, elevators, wharves, docks, dredges,

smelters, powder works, laundries operated by power, quarries, engineering works; logging, lumbering and shipbuilding operations; logging, street and interurban railroads; buildings being constructed, repaired, moved or demolished; telegraph, telephone, electric light or power plants or lines, steam heating or power plants, steamboats, tugs, ferries, and railroads. If there be or arise any extra hazardous occupation or work other than those hereinabove enumerated, it shall come under this act, and its rate of contribution to the accident fund, hereinafter established, shall be, until fixed by legislation, determined by the department hereinafter created, upon the basis of the relation which the risk involved bears to the risks classified in section 4.

SEC. 3. *Definitions.*

In the sense of this act words employed mean as here stated, to-wit:

Factories mean undertakings in which the business of working at commodities is carried on with power-driven machinery, either in manufacture, repair or change, and shall include the premises, yard and plant of the concern.

Workshop means any plant, yard, premises, room or place wherein power-driven machinery is employed and manual labor is exercised by way of trade for gain or otherwise in or incidental to the process of making, altering, repairing, printing, or ornamenting, furnishing or adapting for sale or otherwise any article or part of article, machine or thing, over which premises, room or place the employer of the persons working therein has the right of access or control.

Mill means any plant, premises, room or place where machinery is used, any process of machinery, changing, alterating or repairing any article or commodity for sale or otherwise, together with the yards and premises which are a part of the plant, including elevators, warehouses and bunkers.

Mine means any mine where coal, clay, ore, mineral, gypsum or rock is dug or mined under ground.

Quarry means an open cut from which coal is mined, or clay, ore, mineral, gypsum, sand, gravel or rock is cut or taken for manufacturing, building or construction purposes.

Engineering work means any work of construction, improvement or alteration or repair of buildings, structures, streets, highways, sewers, street railways, railroads, logging roads, interurban railroads, harbor, dock, canal; electric, steam or water power plants; telegraph and telephone lines; electric light or power lines, and includes any other works for the construction, alteration or repair of which machinery driven by mechanical power is used.

Except when otherwise expressly stated, Employer means any person, body of persons, corporate or otherwise, and the legal person representatives of a deceased employer, all while engaged in this state in any extra hazardous work.

Workman means every person in this state who, after September 30, 1911, is engaged in the employment of an employer, whether by

way of manual labor or otherwise, and whether upon the premises or at the plant or he being in the course of his employment away from the plant of his employer: *Provided, however*, That if the enjury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or, if death result from the injury, his widow, children or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit under this section; and if he take under this act, the cause of action against such other shall be assigned to the state for the benefit of the accident fund; if the other choice is made, the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated by this act for such case. Any such cause of action assigned to the state may be prosecuted, or compromised by the department, in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department.

Any individual employe or any member or officer of any corporate employer who shall be carried upon the payroll at a salary or wage not less than the average salary or wage named in such payroll and who shall be injured, shall be entitled to the benefits of this act as and under the same circumstances as and subject to the same obligations as a workman.

Dependent means any of the following named relatives of a workman whose death results from an injury and who leaves surviving no widow, widower or child under the age of sixteen years, viz.: invalid child under the age of sixteen years, daughter between sixteen and eighteen years of age, father, mother, grandfather, grandmother, stepfather, step-mother, grandson, granddaughter, step-son, step-daughter, brother, sister, half-sister, half-brother, niece, nephew, who, at the time of the accident, are dependent, in whole or in part, for their support upon the earnings of the workman. Except where otherwise provided by treaty, aliens, other than father or mother, not residing within the United States at the time of the accident are not included.

Beneficiary means a husband, wife, child or dependent of a workman in whom shall vest a right to receive payment under this act.

Invalid means one who is physically or mentally incapacitated from earning.

The word "child," as used in this act, includes a posthumous child, a child legally adopted prior to the injury, and an illegitimate child legitimated prior to the injury.

The words injury or injured, as used in this act, refer only to an injury resulting from some fortuitous event, as distinguished from the contraction of disease.

SEC. 4. *Schedules of Contribution.*

Insomuch as industry should bear the greater proportion of the burden of the cost of its accidents, each employer shall, prior to January 15th of each year, pay into the state treasury, in accordance with the following schedule, a sum equal to a percentage of his total payroll for that year, to-wit., (the same being deemed the most accurate method of equitable distribution of burden in proportion to relative hazard):

CONSTRUCTION WORK.

Tunnels; bridges; trestles; sub-aqueous work; canal or dock excavation; fire escapes; sewers; house moving; house wrecking	.065
Iron, or steel frame structures or parts of structures	.080
Electric light or power plants or systems; telegraph or telephone systems; pile driving; steam railroads	.050
Steeples, towers or grain elevators, not metal framed; dry docks without excavation; jetties; breakwaters; chimneys; marine railways; waterworks or systems; electric railways with rockwork or blasting; blasting; erecting fire-proof doors or shutters	.050
Steam heating plants; tanks, water towers or windmills, not metal frames	.040
Shaft sinking	.060
Concrete buildings; freight or passenger elevators; fire-proofing of buildings; galvanized iron or tin work; gas works or systems; marble, stone or brick work; road making; roof work; safe moving; slate work; outside plumbing work; metal smokestacks or chimneys	.050
Excavations not otherwise specified; blast furnaces	.040
Street or other grading; cable or electric street railways without blasting; advertising signs; ornamental metal work in buildings	.035
Ship or boat building or wrecking with scaffolds; floating docks	.045
Carpenter work not otherwise specified	.035
Installation of steam boilers or engines; placing wires in conduits; installing dynamos; putting up belts for machinery; marble, stone or tile setting, inside work; mantle setting; metal ceiling work; mill or ship wrighting; painting of buildings or structures; installation of automatic sprinklers; ship or boat rigging; concrete laying in floors, foundations or street paving; asphalt laying; covering steam pipes or boilers; installation of machinery not otherwise specified	.030
Drilling wells; installing electrical apparatus or fire alarm systems in buildings; house heating or ventilating systems; glass setting; building hot houses; lathing; paper hanging; plastering; inside plumbing; wooden stair building	.020

OPERATION (INCLUDING REPAIR WORK) OF

(All combinations of material take the higher rate when not otherwise provided).

Logging railroads; railroads; dredges; interurban electric railroads using third rail system; dry or floating docks	.050
Electric light or power companies; interurban electric railroads not using third rail system; quarries	.040
Street railway companies, all employes; telegraph or telephone companies; stone crushing; blast furnaces; smelters; coal mines; gas works; steamboats; tugs; ferries	.030
Mines other than coal; steam heating or power companies	.025
Grain elevators; laundries; waterworks; paper or pulp mills; garbage works	.020

FACTORIES USING POWER-DRIVEN MACHINERY.

Stamping tin or metal	.045
Bridge work; railroad car making; cooperage; logging with or without machinery; sawmills; shingle mills; staves; veneer; box; lath; packing cases; sash, door or blinds; barrel; keg; pail; basket; tub; wooden ware or wood fibre ware; rolling mills; making steam shovels or dredges; tanks; water towers; asphalt; building material not otherwise specified; fertilizer; cement; stone with or without machinery; kindling wood; masts and spars with or without machinery; canneries, metal stamping extra	.025
Excelsior; iron, steel, copper, zinc, brass or lead articles or wares not otherwise specified; working in wood not otherwise specified; hardware; tile; brick; terra cotta; fire clay; pottery; earthen ware; porcelain ware; peat fuel	.020
Breweries; bottling works; boiler works; foundries; machine shops not otherwise specified	.020
Cordage; working in food stuffs, including oils, fruits and vegetables; working in wool, cloth, leather, paper, broom, brush, rubber or textiles not otherwise specified	.015
Making jewelry, soap, tallow, lard, grease, condensed milk	.015
Creameries; printing; electrotyping; photo-engraving; engraving; lithographing	.015

MISCELLANEOUS WORK.

Stevedoring; longshoring	.030
Operating stockyards, with or without railroad entry; packing houses	.025
Wharf operation; artificial ice, refrigerating or cold-storage plants; tanneries; electricians not otherwise specified	.020
Theater stage employes	.015
Fire works manufacturing	.050
Powder works	.100

The application of this act as between employers and workmen shall date from and including the first day of October, 1911. The payment for 1911 shall be made prior to the day last named, and shall be preliminarily collected upon the payroll of the last preceding three months of operation. At the end of each year an adjustment of accounts shall be made upon the basis of the actual payroll. Any shortage shall be made good on or before February first following, and any over-payment shall be refunded out of the accident fund. Every employer who shall enter into business at any intermediate day shall make his payment for the initial year or portion thereof before commencing operation; its amount shall be calculated upon his estimated payroll, and adjustment shall be made on or before February first of the following year in the manner above provided. It shall be discretionary with the department to permit any annual payment to be made in quarterly installments.

The fund thereby created shall be termed "Accident Fund," which shall be devoted exclusively to the purpose specified for it in this act.

In that the intent is that the funds created under this section shall ultimately become neither more nor less than self-supporting, exclusive of the expense of administration, the rates in this section named are subject to future adjustment by the legislature, and the classifications to re-arrangement following any relative increase or decrease of hazard shown by experience.

It shall be unlawful for the employer to deduct or obtain any part of the premiums required by this section to be by him paid from the wages or earnings of his workmen or any of them, and the making or attempt to make any such deduction shall be a gross misdemeanor. If, after this act shall have come into operation, it is shown by experience under the act that, because of poor or careless management, any establishment or work is unduly dangerous in comparison with other like establishments or works, the department may advance it in classification of risks and premium rates in proportion to the undue hazard. In accordance with the same principle, any such increase in classification or premium rate shall be subject to restoration to the schedule rate. Any such change in classification of risk or of premium rates, or any change caused by change in the class of work, occurring during the year shall, at the time of the annual adjustment, be adjusted by the department in proportion to its duration in accordance with the schedule of this section. If, at the end of any year, it shall be seen that a particular class of industry has contributed more than proved necessary to take care of its accidents, the excess of contribution of that class of industry shall be forthwith refunded to the contributors in proportion to the excess contribution of each. If, at the end of any year, it shall be seen that the contribution to the accident fund by any class of industry shall be less than the drain upon the fund on account of that class, the deficiency shall be made good to the fund on the first day of February of the following year by the employers of that class in proportion to their respective contribution for the past year.

If a single establishment or work comprises several occupations listed in this section in different risk classes, the premium shall be computed according to the payroll of each occupation if clearly separable; otherwise an average rate of premium shall be charged for the entire establishment, taking into consideration the number of employes and the relative hazards. In computing the payroll the entire compensation received by every workman shall be included, whether it be in the form of salary, wage, piece work, overtime, or any allowance in the way of profit sharing, premium or otherwise, and whether payable in money, board, or otherwise.

SEC. 5. *Schedule of Awards.*

Each workman who shall be injured, whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedule, and, except as in this act otherwise provided, such payments shall be in lieu of any and all rights of action whatsoever against any person whomsoever.

COMPENSATION SCHEDULE.

(a) Where death results from the injury the expenses of burial shall be paid in all cases, not to exceed $75.00 in any case, and

(1) If the workman leaves a widow or invalid widower, a monthly

payment of $20.00 shall be made throughout the life of the surviving spouse, to cease at the end of the month in which remarriage shall occur; and the surviving spouse shall also receive $5.00 per month for each child of the deceased under the age of sixteen years at the time of the occurrence of the injury until such minor child shall reach the age of sixteen years, but the total monthly payment under this paragraph (1) of subdivision (a) shall not exceed $35.00. Upon remarriage of a widow she shall receive, once and for all, a lump sum equal to twelve times her monthly allowance, viz.: the sum of $240.00, but the monthly payment for the child or children shall continue as before.

(2) If the workman leaves no wife or husband, but child or children under the age of sixteen years, a monthly payment of $10.00 shall be made to each such child until such child shall reach the age of sixteen years, but the total monthly payment shall not exceed $35.00, and any deficit shall be deducted proportionately among the beneficiaries.

(3) If the workman leaves no widow, widower or child under the age of sixteen years, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty per cent. of the average monthly support actually received by such dependent from the workman during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed $20.00 per month. If any dependent is under the age of sixteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent shall reach the age of sixteen years. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

If the workman is under the age of twenty-one years and unmarried at the time of his death, the parents or parent of the workman shall receive $20.00 per month for each month after his death until the time at which he would have arrived at the age of twenty-one years.

(4) In the event a surviving spouse receiving monthly payments shall die, leaving a child or children under the age of sixteen years, the sum he or she shall be receiving on account of such child or children shall be thereafter, until such child shall arrive at the age of sixteen years, paid to the child increased one hundred per cent., but the total to all children shall not exceed the sum of thirty-five dollars per month.

(b) Permanent total disability means the loss of both legs or both arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the workman from performing any work at any gainful occupation.

When permanent total disability results from the injury the workman shall receive monthly during the period of such disability:

(1) If unmarried at the time of the injury, the sum of $20.00.

(2) If the workman have a wife or invalid husband, but no child under the age of sixteen years, the sum of $25.00. If the husband is not an invalid, the monthly payment of $25.00 shall be reduced to $15.00.

(3) If the workman have a wife or husband and a child or children

under the age of sixteen years, or, being a widow or widower, have any such child or children, the monthly payment provided in the preceding paragraph shall be increased by five dollars for each such child until such child arrive at the age of sixteen years, but the total monthly payment shall not exceed thirty-five dollars.

(c) If the injured workman die during the period of permanent total disability, whatever the cause of death, leaving a widow, invalid widower or child under the age of sixteen years, the surviving widow or invalid widower shall receive twenty dollars per month until death or remarriage, to be increased five dollars per month for each child under the age of sixteen years until such child shall arrive at the age of sixteen years; but if such child is or shall be without father or mother, such child shall receive ten dollars per month until arriving at the age of sixteen years. The total combined monthly payment under this paragraph shall in no case exceed thirty-five dollars. Upon remarriage the payments on account of a child or children shall continue as before to the child or children.

(d) When the total disability is only temporary, the schedule of payment contained in paragraphs (1), (2) and (3) of the foregoing subdivision (b) shall apply so long as the total disability shall continue, increased 50 per cent. for the first six months of such continuance after the first three weeks, but in no case shall the increase operate to make the monthly payment exceed sixty per cent. of the monthly wage (the daily wage multiplied by twenty-six) the workman was receiving at the time of his injury. As soon as recovery is so complete that the present earning power of the workman, at any kind of work, is restored to that existing at the time of the occurrence of the injury the payments shall cease. If and so long as the present earning power is only partially restored the payments shall continue in the proportion which the new earning power shall bear to the old. No compensation shall be payable out of the accident fund unless the loss of earning power shall exceed five per cent.

(e) For every case of injury resulting in death or permanent total disability it shall be the duty of the department to forthwith notify the state treasurer, and he shall set apart out of the accident fund a sum of money for the case, to be known as the estimated lump value of the monthly payments provided for it, to be calculated upon the theory that a monthly payment of twenty dollars, to a person thirty years of age, is equal to a lump sum payment, according to the expectancy of life as fixed by the American Mortality Table, of four thousand dollars, but the total in no case to exceed the sum of four thousand dollars. The state treasurer shall invest said sum at interest in the class of securities provided by law for the investment of the permanent school fund, and out of the same and its earnings shall be paid the monthly installments and any lump sum payment then or thereafter arranged for the case. Any deficiency shall be made good out of, and any balance or overplus shall revert to the accident fund. The state treasurer shall keep accurate accounts of all such segregations of the accident

fund, and may borrow from the main fund to meet monthly payments pending conversion into cash of any security, and in such case shall repay such temporary loan out of the cash realized from the security.

(f) Permanent partial disability means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where ligaments are severed, or any other partial injury known in surgery to be permanent. For any permanent partial disability resulting from an injury the workman shall receive compensation in a lump sum in an amount equal to the extent of the injury, to be decided in the first instance by the department, but not in any case to exceed the sum of $1,500.00. The loss of one major arm at or above the elbow shall be deemed the maximum permanent partial disability. Compensation for any other permanent partial disability shall be in the proportion which the extent of such disability shall bear to the said maximum. If the injured workman be under the age of twenty-one years and unmarried, the parents or parent shall also receive a lump sum payment equal to ten per cent. of the amount awarded the minor workman.

(g) All payments under this section shall be over and above the first aid payments provided in section 10 of this act, but the computation of the monthly payments shall commence at the end of the period of three weeks covered by section 10.

(h) Should a further accident occur to a workman already receiving a monthly payment under this section for a temporary disability, or who has been previously the recipient of a lump sum payment under this act, his future compensation shall be adjusted according to the other provisions of this section and with regard to the combined effect of his injuries, and his past receipt of money under this act.

(i) If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated in any case the department may, upon the application of the beneficiary or upon its own motion, re-adjust for future application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payments.

(j) A husband or wife divorced or living in a state of abandonment of an injured workman at the time of the injury or subsequently, shall not be a beneficiary under this act.

(k) If a beneficiary shall reside or remove out of the state the department may, in its discretion, convert any monthly payments provided for such case into a lump sum payment (not in any case to exceed $4,000) upon the theory, according to the expectancy of life as fixed by the American Mortality Table, that a monthly payment of $20.00 to a person thirty years of age is worth $4,000.00, or, with the consent of the beneficiary, for a smaller sum.

(l) Any court review under this section shall be initiated in the county where the workman resides or resided at the time of the injury, or in which the injury occurred.

SEC. 6. *Intentional Injury—Status of Minors.*

If injury or death results to a workman from the deliberate intention of the workman himself to produce such injury or death, neither the workman nor the widow, widower, child or dependent of the workman shall receive any payment whatsoever out of the accident fund. If injury or death results to a workman from the deliberate intention of his employer to produce such injury or death, the workman, the widow, widower, child or dependent of the workman shall have the privilege to take under this act and also have cause of action against the employer, as if this act had not been enacted, for any excess of damage over the amount received or receivable under this act.

A minor working at an age legally permitted under the laws of this state shall be demed *sui juris* for the purpose of this act, and no other person shall have any cause of action or right to compensation for an injury to such minor workman except as expressly provided in this act, but in the event of a lump sum payment becoming due under this act to such minor workman, the management of the sum shall be within the probate jurisdiction of the courts the same as other property of minors.

SEC. 7. *Conversion Into Lump Sum Payment.*

In case of death or permanent total disability the monthly payment provided may be converted, in whole or in part, into a lump sum payment (not in any case to exceed $4,000), on the theory, according to the expectancy of life as fixed by the American Mortality Table, that a monthly payment of $20.00 to a person thirty years of age is worth the sum of $4,000, in which event the monthly payments shall cease, in whole or in part accordingly or proportionately. Such conversion may only be made after the happening of the injury and upon the written application of the beneficiary (in case of minor children, the application may be by either parent) to the department, and shall rest in the discretion of the department. Within the rule aforesaid the amount and value of the lump sum payment may be agreed upon between the department and the beneficiary.

SEC. 8. *Defaulting Employers.*

If any employer shall default in any payment to the accident fund hereinbefore in this act required, the sum due shall be collected by action at law in the name of the state as plaintiff, and such right of action shall be in addition to any other right of action or remedy. In respect to any injury happening to any of his workmen during the period of any default in the payment of any premium under section 4, the defaulting employer shall not, if such default be after demand for payment, be entitled to the benefits of this act, but shall be liable to suit by the injured workman (or the husband, wife, child or dependent of such workman in case death results from the accident), as he would have been prior to the passage of this act.

In case the recovery actually collected in such suit shall equal or exceed the compensation to which the plaintiff therein would be en-

titled under this act, the plaintiff shall not be paid anything out of the accident fund; if the said amount shall be less than such compensation under this act, the accident fund shall contribute the amount of the deficiency. The person so entitled under the provisions of this section to sue shall have the choice (to be exercised before suit) of proceeding by suit or taking under this act. If such person shall take under this act, the cause of action against the employer shall be assigned to the state for the benefit of the accident fund. In any suit brought upon such cause of action the defenses of fellow servant and assumption of risk shall be inadmissible, and the doctrine of comparative negligence shall obtain. Any such cause of action assigned to the state may be prosecuted or compromised by the department in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department.

SEC. 9. *Employers' Responsibility for Safeguards.*

If any workman should be injured because of the absence of any safeguard or protection required to be provided or maintained by, or pursuant to, any statute or ordinance, or any departmental regulation under any statute, or be, at the time of the injury, of less than the minimum age prescribed by law for the employment of a minor in the occupation in which he shall be engaged when injured, the employer shall, within ten days after demand therefor by the department, pay into the accident fund, in addition to the sums required by section 4 to be paid:

(a) In case the consequent payment to the workman out of the accident fund be a lump sum, a sum equal to 50 per cent. of that amount.

(b) In case the consequent payment to the workman be payable in monthly payments, a sum equal to 50 per cent. of the lump value of such monthly payment, estimated in accordance with the rule stated in section 7.

The foregoing provisions of this act shall not apply to the employer if the absence of such guard or protection be due to the removal thereof by the injured workman himself or with his knowledge by any of his fellow workmen, unless such removal be by order or direction of the employer or the superintendent or foreman of the employer, or any one placed by the employer in control or direction of such workman. If the removal of such guard or protection be by the workman himself or with his consent by any of his fellow workmen, unless done by order or direction of the employer or the superintendent or foreman of the employer, or any one placed by the employer in control or direction of such workman, the schedule of compensation provided in section 5 shall be reduced 10 per cent. for the individual case of such workman.

SEC. 10. *Creation of First Aid Fund.*

A fund is hereby created in the state treasury to be known as the First Aid Fund. Into it shall be paid by each employer, on or before

the fifteenth day of November, 1911, and each month thereafter, the sum of four cents for each day's work or fraction thereof done by each workman for him during the preceding calendar month or part thereof. Two cents of such four cents shall be deducted by the employer from the pay of the workman.

SEC. 11. *Disbursements of First Aid Fund.*

Upon the occurrence of any injury to a workman, he shall receive from the First Aid Fund proper and necessary medical, surgical and hospital services and compensation for the period of temporary or other disability in the sum of five dollars per week, for not to exceed three weeks, payable at the end of each week. It shall be the duty of the employer to see to it that immediate medical and surgical services are rendered, and transportation to hospital provided, and all charges therefor shall be audited and paid and be payable only by the department out of the First Aid Fund.

SEC. 12. *Exemption of Awards.*

No money paid or payable under this act out of the accident or First Aid Funds shall, prior to issuance and delivery of warrant therefor, be capable of being assigned, charged, nor even be taken in execution or attached or garnisheed, nor shall the same pass to any person by operation of law. Any such assignment or charge shall be void.

SEC. 13. *Nonwaiver of Act by Contract.*

No employer or workman shall exempt himself from the burdens or waive the benefits of this act by any contract, agreement, rule or regulation, and any such contract, agreement, rule or regulation shall be *pro tanto* void.

SEC. 14. *Filing Claim for Compensation.*

(a) Where a workman is entitled to compensation under this act he shall file with the department, his application for such, together with the certificate of the physician who attended him, and it shall be the duty of the physician to inform the injured workman of his rights under this act and to lend him all necessary assistance in making his application for compensation and such proof of other matters as required by the rules of the department without charge to the workman.

(b) Where death results from injury the parties entitled to compensation under this act, or some one in their behalf, shall make application for the same to the department, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this act, certificates of attending physicians, if any, and such other proof as required by the rules of the department.

(c) If change of circumstances warrant an increase or rearrangement of compensation, like application shall be made therefor. No increase or rearrangment shall be operative for any period prior to application therefor.

(d) No application shall be valid or claim thereunder enforcible unless filed within one year after the day upon which the injury occurred or the right thereto accrued.

SEC. 15. *Medical Examination.*

Any workman entitled to receive compensation under this act is required, if requested by the department, to submit himself for medical examination at a time and from time to time at a place reasonably convenient for the workman and as may be provided by the rules of the department. If the workman refuses to submit to any such examination, or obstructs the same, his rights to monthly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period.

SEC. 16. *Notice of Accident.*

Whenever any accident occurs to any workman it shall be the duty of the employer to at once report such accident and the injury resulting therefrom to the department, and also to any legal representative of the department. Such report shall state:

1. The time, cause and nature of the accident and injuries, and the probable duration of the injury resulting therefrom.

2. Whether the accident arose out of or in the course of the injured person's employment.

3. Any other matters the rules and regulations of the department may prescribe.

SEC. 17. *Inspection of Employer's Books.*

The books, records and payrolls of the employer pertinent to the administration of this act shall always be open to inspection by the department or its traveling auditor, agent or assistant, for the purpose of ascertaining the correctness of the payroll, the men employed, and such other information as may be necessary for the department and its management under this act. Refusal on the part of the employer to submit said books, records and payrolls for such inspection to any member of the commission, or any assistant presenting written authority from the commission, shall subject the offending employer to a penalty of one hundred dollars for each offense, to be collected by civil action in the name of the state and paid into the accident fund, and the individual who shall personally give such refusal shall be guilty of a misdemeanor.

SEC. 18. *Penalty for Misrepresentation as to Payroll.*

Any employer who shall misrepresent to the department the amount of payroll upon which the premium under this act is based shall be liable to the state in ten times the amount of the difference in premium paid and the amount the employer should have paid. Any employer who shall misrepresent to the department the amount of contribution due from him to or collected by him for the First Aid Fund shall be liable to the state in ten times the amount attempted to be concealed or withheld by such misrepresentation. The liability to the state un-

der this section shall be enforced in a civil action in the name of the state. All sums collected under this section shall be paid into the Accident or First Aid Fund in proportion to the interest of each or either therein.

SEC. 19. *Emergency Division of Expense of Administration.*

The burden of the cost of salaries, traveling and office expenses incident to the administration of this act shall (except as otherwise provided for) be distributed to the funds as follows: to the accident fund, 15 per cent. thereof; to the First Aid Fund, 85 per cent. thereof.

SEC. 20. *Public and Contract Work.*

Whenever the state, county or municipal corporation shall engage in any extra hazardous work in which the workmen are employed for wages, this act shall be applicable thereto. The employer's payments into the accident and first aid funds shall be made from the treasury of the state, county or municipality. If said work is being done by contract, the payroll of the contractor and sub-contractor shall be the basis of computation, and in the case of contract work consuming less than one year in performance the required payment into the accident fund shall be based upon the total payroll. The contractor and any sub-contractor shall be subject to the provisions of the act, and the state for its general fund; the county or municipal corporation shall be entitled to collect from the contractor the full amount payable to the First Aid and Accident funds, and the contractor in turn shall be entitled to collect from the sub-contractor his proportionate amount of the payment. The provisions of this section shall apply to all extra hazardous work done by contract, except that in private work the contractor shall be responsible, primarily and directly, to the accident fund for the proper percentage of the total payroll of the work and to the first aid fund for the amounts due it, and the owner of the property affected by the contract shall be surety for such payments. Whenever and so long as, by state law, city charter or municipal ordinance, provision is made for municipal employes injured in the course of employment, such employes shall not be entitled to the benefits of this act and shall not be included in the payroll of the municipality under this act.

SEC. 21. *Interstate Commerce.*

The provisions of this act shall apply to employers and workmen engaged in intrastate and also interstate or foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the Congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, except that any such employer and any of his workmen working only in this state may, with the approval of the department, and so far as not forbidden by any act of Congress, voluntarily accept the provisions of this act by filing written acceptances with the department. Such acceptances, when filed with and approved by the de-

partment, shall subject the acceptors irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms. Payment of premium shall be on the basis of the payroll of the workmen who accept as aforesaid.

SEC. 22. *Elective Adoption of Act.*

Any employer and his employes engaged in works not extra hazardous may, by their joint election, filed with the department, accept the provisions of this act, and such acceptance, when approved by the department, shall subject them irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms. Ninety per cent. of the minimum rate specified in section 4 shall be applicable to such case until otherwise provided by law.

SEC. 23. *Court Review.*

Any employer, workman, beneficiary or person feeling aggrieved at any decision of the department affecting his interests under this act may have the same reviewed by a proceeding for that purpose, in the nature of an appeal, initiated in the Superior Court of the county of his residence (except as otherwise provided in subdivision (1) of section numbered 5) insofar as such decision rests upon questions of fact, or of the proper application of the provisions of this act, it being the intent that matters resting in the discretion of the department shall not be subject to review. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment pronounced. No such appeal shall be entertained unless notice of appeal shall have been served by mail or personally upon some member of the commission within twenty days following the rendition of the decision appealed from and communication thereof to the person affected thereby. No bond shall be required, except that an appeal by the employer from a decision of the department under section 9 shall be ineffectual unless, within five days following the service of notice thereof, a bond, with surety satisfactory to the court, shall be filed, conditioned to perform the judgment of the court. Except in the case last named an appeal shall not be a stay. The calling of a jury shall rest in the discretion of the court except that in cases arising under sections 9, 17 and 18 either party shall be entitled to a jury trial upon demand. It shall be unlawful for any attorney engaged in any such appeal to charge or receive any fee therein in excess of a reasonable fee, to be fixed by the court in the case, and, if the decision of the department shall be reversed or modified, such fee and the fees of medical and other witnesses and the costs shall be payable as follows: Out of the administration fund, if the accident fund is affected by the litigation, out of the first aid fund if it is the fund so affected. In other respects the practice in civil cases shall apply. Appeal shall lie from the judgment of the superior court as in other civil cases. The attorney general shall be the legal adviser of the department and shall represent it in all proceedings, whenever so requested by any of the commissioners. In all court proceedings under or pursuant to this

act the decision of the department shall be *prima facie* correct, and the burden of proof shall be upon the party attacking the same.

SEC. 24. *Creation of Department.*

The administration of this act is imposed upon a department, to be known as the Industrial Insurance Department, to consist of three commissioners to be appointed by the governor, one of whom shall be chosen from the members of organized labor. One of them shall hold office for the first two years, another for the first four years, and another for the first six years following the passage and approval of this act. Thereafter the term shall be six years. Each commissioner shall hold until his successor shall be appointed and shall have qualified. A decision of any question arising under this act concurred in by two of the commissioners shall be the decision of the department. The governor may at any time remove any commissioner from office in his discretion, but within ten days following any such removal the governor shall file in the office of the secretary of state a statement of his reasons therefor. The commissioners shall select one of their number as chairman. The main office of the commission shall be at the state capitol, but branch offices may be established at other places in the state. Each member of the commission shall have power to issue subpoenas requiring the attendance of witnesses and the production of books and documents.

SEC. 25. *Salary of Commissioners.*

The salary of each of the commissioners shall be thirty-six hundred dollars per annum, and he shall be allowed his actual and necessary traveling and incidental expenses; and any assistant to the commissioners shall be paid for each full day's service rendered by him his actual and necessary traveling expenses and such compensation as the commissioners may deem proper, not to exceed six dollars per day to an auditor, or five dollars per day to any other assistant.

SEC. 26. *Deputies and Assistants.*

The commissioners may appoint a sufficient number of auditors and assistants to aid them in the administration of this act, at an expense not to exceed $5,000.00 per month. They may employ one or more physicians in each county for the purpose of official medical examinations, whose compensation shall be limited to five dollars for each examination and report therein. They may procure such record books as they may deem necessary for the record of the financial transactions and statistical data of the department, and the necessary documents, forms and blanks. They may establish and require all employers to install and maintain an uniform form of payroll.

SEC. 27. *Conduct, Management and Supervision of Department.*

The commission shall, in accordance with the provisions of this act:

1. Establish and promulgate rules governing the administration of this act.

2. Ascertain and establish the amounts to be paid into and out of accident and first aid funds.

3. Regulate the proof of accident and extent thereof, the proof of death and the proof of relationship and the extent of dependency.

4. Supervise the medical, surgical and hospital treatment accorded under the first aid provisions of this act, to the intent that same may be in all cases suitable and wholesome.

5. Issue proper receipts for moneys received, and certificates for benefits accrued and accruing.

6. Investigate the cause of all serious injuries and report to the governor from time to time any violations or laxity in performance of protective statutes or regulations coming under the observation of the department.

7. Compile and preserve statistics showing the number of accidents occurring in the establishment or works of each employer, the liabilities and expenditures of the accident and first aid funds on account of, and the premium collected from the same.

8. Make annual reports to the governor (one of them not more than sixty nor less than thirty days prior to each regular session of the legislature) of the workings of the department, and showing the financial status and the outstanding obligations of the accident and first aid funds, and the statistics aforesaid.

SEC. 28. *Medical Witnesses.*

Upon the appeal of any workman from any decision of the department affecting the extent of his injuries or of the progress of the same, the court may appoint not to exceed three physicians to examine the physical condition of the appellant, who shall make to the court their report thereon, and they may be interrogated before the court by or on behalf of the appellant in relation to the same. The fee of each shall be fixed by the court, but shall not exceed ten dollars per day each.

SEC. 29. *Disbursement of Funds.*

Disbursements out of the funds shall be made only upon warrants drawn by the state auditor upon vouchers therefor transmitted to him by the department and audited by him. The state treasurer shall pay every warrant out of the fund upon which it is drawn. If, at any time, there shall not be sufficient money in the fund on which any such warrant shall have been drawn wherewith to pay the same, the employer on account of whose workman it was that the warrant was drawn shall pay the same, and he shall be credited upon his next folloing contribution to such fund the amount so paid with interest thereon at the legal rate from the date of such payment to the date such next following contribution became payable, and if the amount of the credit shall exceed the amount of the contribution, he shall have a warrant upon the same fund for the excess, and if any such warrant shall not be so paid, it shall remain nevertheless payable out of the fund. The state treasurer shall to such extent as shall appear to him

to be advisable keep the moneys of the first aid fund and the unsegregated portion of the accident fund invested at interest in the class of securities provided by law for the investment of the permanent school fund. The state treasurer shall be liable on his official bond for the safe custody of the moneys and securities of the first aid fund, but all the provisions of an act approved February 21, 1907, entitled "An act to provide for state depositories and to regulate the deposits of state moneys therein" shall be applied to said moneys and the handling thereof by the state treasurer.

SEC. 30. *Test of Invalidity of Act.*

If any employer shall be adjudicated to be outside of the lawful scope of this act, the act shall not apply to him or his workmen, or if any workman shall be adjudicated to be outside the lawful scope of this act because of remoteness of his work from the hazard of his employer's work, any such adjudication shall not impair the validity of this act in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. In the latter case no payment into the first aid fund shall be required in future on or for account of such workman, his wages shall not be computed as a part of the payroll under section 4, and he shall not, nor shall his family or dependents be beneficiaries of either the accident or first aid funds, nor shall this act apply to him or them in other respects. If the provisions of this act for the creation of the first aid fund shall be adjudicated to be invalid, the provisions relating to benefits therefrom and disbursements thereof shall thereupon become invalid, and all moneys received into the first aid fund shall be distributable according to the justice of the matter, but such adjudication shall not impair the validity of this act in other respects. If the provisions of section 4 of this act for the creation of the accident fund, or the provisions of this act making the compensation to the workmen provided in it exclusive of any other remedy on the part of the workman shall be held invalid the entire act shall be thereby invalidated except the provisions of section 31, and an accounting according to the justice of the case shall be had of moneys received. In other respects an adjudication of invalidity of any part of this act shall not affect the validity of the act as a whole or any other part thereof.

SEC. 31. *Statute of Limitations Saved.*

If the provisions of this act relating to compensation for injuries to or death of workmen become invalid because of any adjudication, or be repealed, the period intervening between the occurrence of an injury or death and such repeal or the rendition of the final adjudication of invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death; but in any such action any sum paid out of the accident fund and one-half of any sums paid out of the first aid fund to the workman on account of injury to whom the action is prosecuted, shall

be taken into account or disposed of as follows: If the defendant employer shall have paid without delinquency into the accident fund the payment provided by section 4 and into the first aid fund his share of the payments provided by section 10, such sums shall be credited upon the recovery as payment thereon, otherwise the sums shall not be so credited but shall be deducted from the sum collected and be paid into the fund from which they had been previously disbursed.

SEC. 32. *Appropriations.*

There is hereby appropriated out of the state treasury the sum of one hundred and fifty thousand dollars, or so much thereof as may be necessary, to be known as the administration fund, out of which the salaries, traveling and office expenses of the department shall be paid, and also all other expenses of the administration of the accident fund; and there is hereby appropriated out of the accident fund for the purpose to which said fund is applicable the sum of $..... and out of the first aid fund for purposes to which said fund is applicable the sum of $....., or in either case so much thereof as shall be necessary for the purposes of this act.

SEC. 33. *Safeguard Regulations Preserved.*

Nothing in this act contained shall repeal any existing law providing for the installation or maintenance of any device, means or method for the prevention of accidents in extra hazardous work or for a penalty or punishment for failure to install or maintain any such protective device, means or method, but sections 8, 9 and 10 of the act approved March 6, 1905, entitled: "An Act providing for the protection and health of employes in factories, mills or workshops, where machinery is used, and providing for suits to recover damages sustained by the violation thereof, and prescribing a punishment for the violation thereof and repealing an act entitled 'An Act providing for the protection of employes in factories, mills or workshops where machinery is used, and providing for the punishment of the violation thereof,' approved March 6, 1903, and repealing all other acts or parts of acts in conflict herewith," are hereby repealed, except as to any cause of action which shall have accrued thereunder prior to October 1, 1911.

SEC. 34. *Distribution of Funds in Case of Repeal.*

If this act shall be hereafter repealed, all moneys which are in the accident and first aid funds at the time of the repeal shall be subject to such disposition as may be provided by the legislature, and in default of such legislative provision distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

SEC. 35. *Saving Clause.*

This act shall not affect any contract entered into before its passage and existing, or any action pending or cause of action existing on the 30th day of September, 1911.

ATTORNEY'S REPORT.

The commission, having determined to report to the governor the foregoing proposed act as providing the most desirable method of covering, by legislation, the entire field of liability for industrial accidents, has requested a report from its attorney upon the constitutionality of the proposed act.

The proposed act is the first complete application attempted in the United States of the principles underlying the legislation which, throughout continental Europe, has proved successful, satisfactory and beneficial to all interests. By its express terms (section 1) it is asserted and justified from a legal and economical standpoint by the sovereign and police power of the state. Is it within those powers?

I.—The Police Power.

Definitions of the police power are multitudinous; a few of them are submitted:

"It aims to regulate the intercourse of citizen with citizen, to prescribe the manner of using one's property and pursuing one's occupation so as not to trespass on the property or rights of others, and as such is a power whose necessities and uses grow with the increasing complexities of our civilization and the increasing diversities in the industries and modes of life. The sphere, therefore, of its operations is ever widening. Every new use to which the forces of nature are put calls for a new interference of this power, that such use may not operate to the injury of others." Brewer, J., in *K. P. Railway Co. vs. Moore*, 16 Kan. 573.

"The power we allude to is rather the police power, the power vested in the legislature by the constitution to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, whether with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth and of the subjects of the same." Shaw, C. J., in *Commonwealth vs. Alger*, 7 Cush. (Mass.) 85.

"This police power of the state extends to the protection of the lives, limbs, health, comfort and quiet of all persons and the protection of all property within the state. * * * There is also the general police power of the state, by which persons and property are subjected to all kinds of restraints and burdens in order to secure the general health, comfort and prosperity of the state, of the perfect right in the legislature to do which no question ever was or, upon acknowledged general principles, ever can be made." Redfield, C. J., in *Thorpe vs. Rutland etc. R. R. Co.*, 27 Vt. 149. Strong, J., in *R. R. Co. vs. Husen*, 95 U. S. 465.

"By means of this power the legislature exercises a supervision over matters involving the common weal and enforces the observance by each individual member of society of the duties which he owes to others and to the community at large. It may be exerted whenever necessary to secure the peace, good order, health, morals and general welfare of the community. * * * In short, the police power covers a wide range of particular unexpressed powers reserved to the state affecting the freedom of action, personal conduct and the use and control of property." Andrews, J., in *People vs. King*, 110 N. Y. 418.

"We hold that the police power of the state embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals or the public safety." Harlan, J., in *C., B. & Q. Ry. Co. vs. Illinois*, 200 U. S. 341.

"The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community. * * * For the pursuit of any lawful trade or business the law imposes similar conditions. Regulations respecting them are almost infinite, varying with the nature of the business." Field, J., in *Crowley vs. Christianson*, 137 U. S. 86.

"The power of the state, sometimes termed its police power, to prescribe regulations promoting the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the state, develop its resources and add to its welfare and prosperity." Field, J., in *Barbier vs. Connolly*, 113 U. S. 31; Fuller, J., in *In re Kemmler*, 136 U. S. 436.

"The police power is not subject to any definite limitations, but is co-extensive with the necessities of the case and the safeguard of the public intrests." Brown, J., in *Camfield vs. U. S.*, 167 U. S. 518.

"The police power of the state in its broadest subdivision means the general power of the state to preserve and promote the public welfare, even at the expense of private rights." Anders, J., in *Karasek vs. Peier*, 22 Wash. 419.

"That inherent and plenary power in the state which enables it to prohibit all things hurtful to the comfort, safety and welfare of society." Dunbar, J., in *State vs. Carey*, 4 Wash. 427.

"The police power is that which tends to promote the public health, comfort and welfare." Rudkin, C. J., in *Smith vs. Spokane*, 55 Wash, 221.

Article 2, section 35, of the constitution of Washington reads as follows: "The legislature shall pass necessary laws for the protection of persons working in mines, factories and other employments dangerous to life or deleterious to health, and fix pains and penalties for the enforcement of the same."

This provision seems to bring the subject, in part at least, within the legislative power.

Article 1, section 30, reads: "The enumeration in this constitution of certain rights shall not be construed to deny others retained by the people."

The police power has been variously applied to statutes imposing liability upon or regulating the liability of those engaged in dangerous works or businesses. Instances are:

Kirby vs. Pennsylvania, etc., R. R. Co., 76 Pa. St. 506, sustaining a state statute giving one injured while engaged on or near a railroad only the same right of action as an employe; in other words, abolishing in such cases the common law doctrine of respondent superior. The same statute was lately sustained in *Martin vs. Pittsburgh, etc., Co.*, 203 U. S. 284.

C., R. I. & P. Ry. vs. Zernecke, 59 Neb. 689, sustaining a state statute making railroads liable for injury or death of passengers. Affirmed in 183 U. S. 582.

Bertholf vs. O'Reilly, 74 N. Y. 509, sustaining a statute imposing liability upon the owner of premises leased for the sale of intoxicating liquors for damages caused by drunkenness.

Bacon vs. Walker, 204 U. S. 311, sustaining a state statute imposing liability upon one pasturing sheep on the public domain within two miles of a dwelling.

Jones vs. Brim, 165 U. S. 180, sustaining a state statute imposing liability upon the owner of a herd of animals, driving same on the public road on a hillside, for damages caused by falling rocks, etc.

M. P. Ry. Co. vs. Mackey, 127 U. S. 205, sustaining a state statute making railroad companies liable for the negligence of fellow-servants.

Minneapolis, etc., R. R. Co. vs. Emmons, 149 U. S. 364, sustaining a state statute making railroad companies liable for stock killed on their unfenced right-of-way.

St. Louis, etc., Ry. Co. vs. Matthews, 165 U. S. 1, sustaining a state statute imposing liability upon railroad companies for damage caused by fire set out by their locomotives.

Atchison etc. R. R. Co. vs. Matthews, 174 U. S. 96, and
Missouri Pacific R. R. Co. vs. Humes, 115 U. S. 512, are like cases.

Wilmington Mining Co. vs. Fulton, 205 U. S. 60, making mine owners liable for the negligence of mine examiners employed pursuant to state examination.

Ives vs. R. R. Co., 124 N. Y. Supp. 920 (since affirmed by the supreme court of New York), sustaining a state statute making employers engaged in dangerous work insurers, to some extent, of the safety of their workmen.

Kiley vs. Chicago, etc., Ry. Co., 138 Wis. 215, sustaining a state statute making railroad companies liable for negligence of fellow servants.

Missouri Pacific Ry. Co. vs. Healy, 25 Kan. 35;
Bucklow vs. Central Ia. Ry. Co. (Ia.), 21 N. W. 103;
Pierce vs. Van Duzen, 78 Fed. 693;
Campbell vs. Cook, 86 Tex. 630, are like cases.

State statutes limiting the hours of labor have been sustained because within the police power in numerous cases. Instances are:

Holden vs. Hardy, 169 U. S. 366, sustaining a state statute limiting the hours of labor in underground mines and smelters.

State vs. Buchanan, 29 Wash. 602, sustaining a state statute prohibiting the employment of women more than ten hours a day in mercantile pursuits.

Muller vs. Oregon, 208 U. S. 412, is a like case.

So it seems safe to conclude that the proposed act is within the police power of the state. It remains to consider whether the manner of the exercise of the power as proposed is obnoxious to any constitutional provision. Does it conflict with the constitutional rights of any interest affected by it? It affects the state, the employer, the employe.

II.—Validity as to the State.

The act proposes to create a new state department, and to appropriate a sum of money out of the state treasury to defray the expenses of the administration of the department. Washington has no constitutional limitation upon the power of the legislature to expend as it wills the money of the state (except the permanent school fund, which is not here involved, and except that no public money may be appropriated for any religious worship or establishment), unless there be a limitation to be implied, that taxation shall only be for public purposes. If so, it nevertheless must be clear that it is a public purpose to pay the salaries and defray the office, traveling and court expenses of state officials, and other expenses of a state department charged with the administration of a branch of the police power of the state, just as the state bears without question the expense of administration of other departments, *e. g.*, the railroad commission, mine, factory, grain and hotel inspection, all operating under the police power.

III.—Validity as to the Employer, Direct.

The act proposes to place (indirectly) upon the employer engaged in extra hazardous operations the burden of all accidents to his employes. The causes of action for injury to workmen recognized in present day law involve negligence of either: (a) the employer; (b) a fellow employe; (c) the employer, that of the injured employe contributing, *i. e.*, combined negligence; (d) the employe; or (e) the doctrine of assumed risk.

For (a) the burden is already upon the employer.

For (b) the burden has been in some jurisdictions shifted by statute, in some cases as to certain and in others as to all employments: Arkansas 1907, Colorado 1901, Florida 1906, Georgia 1895, Iowa 1897 and 1902, Kansas 1874 and 1901, Maryland 1888, Minnesota 1905, Missouri 1899, Montana 1905, Nebraska 1907, Nevada 1907, New Mexico 1897, North Carolina 1905, North Dakota 1907, South Dakota 1907, Texas 1897, Wisconsin 1898, and such statutes have been sustained by the courts as a lawful exercise of the police power.

Missouri Pacific Ry. Co. vs. Mackey, 127 U. S. 205, in which the court, in sustaining the Kansas act of 1874 abolishing the fellow servant doctrine in the case of railroad companies, said:

"The supposed hardship and injustice consist in imputing liability to the company, where no personal wrong or negligence is chargeable to it or its directors. But the same hardship and injustice, if there be any, exist when the company, without any wrong or negligence on its part, is charged for injuries to passengers. Whatever care and precaution may be taken in conducting its business or in selecting its servants, if injury happen to the passengers from the negligence or incompetency of the servants, responsibility therefor at once attaches to it. The utmost care on its part will not relieve it from liability, if the passenger injured be himself free from contributory negligence. The law of 1874 extends this doctrine and fixes a like liability upon railroad companies, where injuries are subsequently suffered by employes, though it may be by the negligence or incompetency of a fellow servant in the same general employment and acting under the same immediate direction.

That its passage was within the competency of the legislature we have no doubt."

Kiley vs. Chicago etc. Ry. Co., 138 Wis. 215;
Ditberner vs. Chicago etc. Ry. Co., 47 Wis. 128;
Missouri Pacific Ry. Co. vs. Healy, 25 Kan. 35;
Missouri Pacific Ry. Co. vs. Mackey, 33 Kan. 298;
Bucklew vs. Central Iowa Ry. Co. (Ia.), 21 N. W. 103;
McAunich vs. M. & R. Co., 20 Ia., 338;
Mining Co. vs. Firstbrook, 36 Col. 498;
Deppe vs. R. R. Co., 36 Ia. 52;
Pierce vs. VanDuzen, 78 Fed. 693;
Campbell vs. Cook, 86 Tex. 630;
Thompson vs. Banking Co., 54 Ga. 509;
Railroad Co. vs. Ivey, 73 Ga. 499;
Missouri Pacific Ry. Co. vs. Castle (C. C. A.), 172 Fed. 841.

(c) It was also a like defense that the negligence of the injured employe contributed, even though slightly, to the injury. In some jurisdictions the legislatures, in others the courts, have modified the rigor of this defense. In some, where the contributory negligence is slight, it is no longer a defense, but is considered in mitigation of damages; statutes of Nebraska 1907, Nevada 1907, North Dakota 1907, act of Congress 1906, sustained in *R. R. Co. v. Gutierrez*, 215 U. S. 87. In Wisconsin, by the statute of 1898, the test is whether the negligence of the employer was greater than that of the injured employe. By some state statutes it is made a *pro tanto* defense without regard to preponderance: Florida 1906, Maryland 1888, Georgia 1895, South Dakota 1907.

In Illinois the courts for a period of years adopted without statute the doctrine of comparative negligence, their decisions varying upon the question of preponderance:

Railroad Co. vs. Still, 19 Ill. 499;
Railroad Co. vs. Jacobs, 20 Ill. 478;
Railroad Co. vs. Sweeny, 52 Ill. 325;
Railroad Co. vs. Johnson, 116 Ill. 206;
Coal Co. vs. Abbott, 181 Ill. 495;
Coal Co. vs. Denman, 185 Ill. 413;
Western Coal Co. vs. Weaver, 192 Ill. 333.

The Georgia statute was enforced in the following cases:

Christian vs. Ry. Co., 120 Ga. 314
Railroad Co. vs. Wiggins, 113 Ga. 842;
Willingham vs. Railroad Co., 113 Ga. 374;
Railroad Co. vs. Newman, 94 Ga. 560;

and has been applied to the case of a passenger by the Circuit Court of Appeals, opinion by Judge Taft, in 88 Fed. 455.

Tennessee and Kansas courts have also adopted the doctriue, there being no statute:

Railroad Co. vs. Carroll, 6 Heisk, 347;
Wichita etc. Co. vs. Davis, 37 Kan. 743.

Other states have by statute abolished, in whole or in part, for certain classes of cases the doctrine of contributory negligence: Illinois 1905, New Mexico 1897, New York 1902, Ohio 1906. In the courts of

admiralty such a division of damages in cases of combined negligence has been the rule for years as between ships. Such statutes have been sustained by the courts.

In *Missouri Pacific Ry. Co. vs. Castle* (C. C. A.), 172 Fed. 841, the court said: "In so far as the statute creates the rule of comparative negligence it in no wise tends to destroy any of the constitutional rights of the defendant." In the language of Mr. Justice Moody in the *Howard* case, "The whole subject of contributory negligence is under the control of the legislative power."

Therefore it seems safe to conclude that the defense of contributory negligence may be lawfully abolished entirely.

(c) The doctrine of the defense of assumed risk is approximately of the same age as the fellow servant defense. It is no more sacred. It has been by statute in several states eliminated in part, and in some states entirely, in cases where statutes or public regulations concerning safeguards have been violated by the employer: Illinois 1905, Indiana 1891, Iowa 1902, Massachusetts 1902, New York 1902, Ohio 1904 and 1906, Florida 1891, Texas 1891, Washington 1905, Wisconsin 1906, Wyoming 1891, United States 1901. Such legislation has been generally sustained by the courts:

Ives vs. Railroad Co., 124 N. Y. Supp. 920;
Hall vs. West & Slade Mill Co., 39 Wash. 447;
Johnson vs. S. P. Co., 196 U. S. 1.
Walker vs. Railroad Co., 135 N. C. 738;
Mott vs. Railroad Co., 131 S. C. 234;
Cogdell vs. Ry. Co., 129 N. C. 398;
Thomas vs. Railroad Co., 129 N. C. 392;
Coal Co. vs. Abbott, 181 Ill. 495;
Coal Co. vs. Denman, 185 Ill. 413;
Davis Coal Co. vs. Polland, 27 Ind. App. 697;
Island Coal Co. vs. Swaggerty, 159 Ind. 664;
Narramore vs. Ry. Co., 96 Fed. 298;
U. S. Cement Co. vs. Cooper (Ind.), 92 N. E. 981;
Hailey vs. Ry. Co., 113 La. 533;
Murphy vs. Grand Rapids Co., 142 Mich. 677;
Kilpatrick vs. Ry. Co., 74 Vt. 288;
Johnson vs. Coal Co., 88 Ark. 243.

In *Coley vs. Railroad Co.*, 129 N. C. 407, s. c. 128 N. C. 534, the constitutional question was raised and expressly decided.

And in *Lore vs. Manufacturing Co.*, 160 Mo. 608, the court said: "The constitutionality of such laws is no longer in doubt."

(d) There remains to be considered the case where the injury results from the fault of the employe (in which may be included the employe's portion of combined negligence). The intentional wrong of the employe is to be first eliminated, for the proposed act (section 6) eliminates it. There are left the cases where, through momentary distraction or inadvertent miscalculation, induced probably frequently by the mental or physical fatigue of the workman, accidental injury comes to the workman without any intention or moral fault of his own. Such cases are now everywhere recognized as inevitable; as a necessary hazard of the work; as certain to happen as the machinery

to break. The moral fault of the workman being eliminated, the subject seems as clearly within the legislative power as the doctrine of assumed risk or contributory negligence.

This principle should be applied to all so-called degrees of negligence. The courts are today, unaided by statute, discarding the computation of negligence by degrees, and are establishing the simpler doctrine that negligence is the absence of due care, having in view the surrounding circumstances of each case. So that, when the question of moral fault is eliminated, the power of the legislature to deal with the negligence doctrine cannot be made to depend upon whether heretofore the negligence would have been called gross, ordinary, or slight.

The New York court in the *Ives* case, above cited, said:

"That the legislature has the power to deal with the question of employers' liability on a basis other than fault is not clear beyond peradventure, but every presumption is in favor of the constitutionality of the act. Nor do I find its constitutionality so doubtful as to warrant this court in holding that such action is not within the constitutional power of the legislature."

The question is closely allied to that of the legislative power to take away from the employe his common law cause of action based on the negligence of the employer, which is hereinafter discussed. It would seem to follow that if the latter is within the legislative power the legislature is also competent to put upon the industry the burden of all accidental injuries due to its operation, not caused by any moral wrong of the employe. The common law makes every case turn upon some application of the doctrine of negligence. If, in the legislative discretion, the doctrine of negligence, as between employer and injured employe, has proven unfitted to the wonderful increase of hazard in modern industrial life, it may be lawfully, as it may be justly, discarded as the test of liability and some other rule substituted in its place.

The Supreme Court of the United States in *Railroad Co. vs. Zernecke*, 183 U. S. 582, in sustaining the Nebraska act making railroad companies insurers of the safety of their passengers regardless of fault, said:

"Our jurisdiction affords examples of legal liability without fault and the deprivation of property without fault being attached to its owner. The law of deodands was such an example; the personification of a ship in admiralty law is another. Other examples are afforded in the liability of the husband for the torts of the wife, and the liability of a master for the acts of his servants."

This language of the Supreme Court was applied to the recent New York statute in *Ives vs. Ry. Co.*, 124 N. Y. Supp. 926.

In the *Osceola*, 189 U. S. 158, it is held that the admiralty law makes the ship liable for maintenance and care and medical treatment of all seamen injured, whether the injury was caused by any fault of the ship or not.

To the same effect is *Sanders vs. Stimson Mill Co.*, 32 Wash. 627.

The Court of Appeals of New York in *Bertholf vs. O'Reilly*, 74 N. Y. 509, said:

"And the act of 1873 is not invalid because it creates a right of action and imposes a liability not known to the common law. There is no such limit to legislative power. The legislature may alter or repeal the common law. It may create new offenses, enlarge the scope of civil remedies, and fasten responsibility for injuries upon persons against whom the common law gives no remedy. We do not mean that the legislature may impose upon one man liability for an injury suffered by another with which he had no connection. But it may change the rule of the common law, which looks only to the proximate cause of the mischief in attaching legal responsibility, and allow a recovery to be had against those whose acts contributed, although remotely, to produce it."

Another instance of the imposition of a new liability is afforded in the case of *Railway Co. vs. Emmons*, 149 U. S. 364, sustaining a state statute which required railroads to fence their right-of-way, and made them liable for damages to all stock killed and for depreciation in value of adjacent land.

Another instance is the case of *Railway Co. vs. Mathews*, 165 U. S. 1, in which the court sustained the Missouri statute making railroad companies absolutely liable for all damage caused by fire set out by them, saying:

"When both parties are equally faultless, the legislature may properly consider it to be just that the duty of insuring private property against loss or injury caused by the use of dangerous instruments should rest upon the railroad company which employs the instruments and creates the peril for its own profit, rather than upon the owner of the property who has no control over or interest in those instruments. * * * The statute is a constitutional and valid exercise of the legislative power of the state."

Another instance is the case of *Railway Co. vs. Mackey*, 127 U. S. 205, sustaining a state statute abolishing, as to railroad employers, the fellow servant doctrine, the court saying:

"The supposed hardship and injustice consist in imputing liability to the company where no personal wrong or negligence is chargeable to it or its directors. * * * That its passage was within the competency of the legislature we have no doubt."

Another instance is *Streubel vs. Railway Co.*, 12 Wis. 74, sustaining the constitutionality of an act imposing liability upon railroad companies for the wages of laborers earned by work on its road, though in the employment of an independent contractor.

Another instance is the decision in *Jones vs. Brim*, 165 U. S. 180, sustaining a state statute imposing absolute liability upon the owner of a herd of animals for all damages caused by driving the same on a public road on the hillside, by falling rocks, etc., the court saying:

"In effect, the legislature declared that the passage of droves or herds of animals over a hillside highway was so likely, if great precautions were not observed, to result in damage to the road, that where this damage followed such driving there ought to be no controversy over the existence or non-existence of negligence, but that there should be an absolute legal presumption to that effect resulting from the fact of having driven the herd."

In *Jensen vs. Railroad Co.*, 127 N. W. (S. D.) 650, the court holds constitutional a statute making railroads absolutely liable for all fires set out and also making them liable absolutely for all injury to stock by failure to build sufficient fences and cattle guards, saying:

"The exercise of the police power in this class of cases is based upon the ground that where persons are engaged in a calling or business attended with danger to other persons and their property, then the legislature may step in and impose conditions upon the exercise of such calling or business for the general good and welfare of society, and may prescribe the terms upon which such dangerous calling or business will be permitted to be carried on by persons in charge thereof, whether such persons happen to be private individuals or railway corporations."

It seems to be a sound and safe conclusion that so far the proposed act presents no real constitutional difficulty.

IV.—Validity as to Employer Indirect.

The question has so far been considered as if it were proposed to place upon each employer engaged in hazardous work the direct responsibility for all injuries happening to his own employes. The proposed act goes further, and, relieving all such employers from any direct liability whatsoever (the one exception, section 8, is not of importance in this connection) to their employes, requires each employer to contribute money (the amount thereof depending upon the largeness of his operations, his payroll being the rule of measure, and upon the relative degree of hazard incident to the class of his work) to a fund out of which all injured employes or, if death results, their families and dependents are compensated and cared for.

Authorities upon this phase of the matter are few, but fortunately well reasoned and convincing.

In *State vs. Cassidy*, 22 Minn. 312, the court sustained an act to establish a fund for the foundation and maintenance of an asylum for inebriates, requiring all sellers of liquors to pay ten dollars a year to the state treasurer, through the county treasurers, in addition to the usual license, the fund to be disbursed by a state commission in the erection and operation of a state asylum for inebriates. The court in its opinion points out that the act is an exercise of the police power upon a subject clearly within that power, saying:

"The act 'regards the traffic as one tending to produce intemperance, and as likely, by reason thereof, to entail upon the state the expense and burthen of providing for a class of persons rendered incapable of self-support, the evil influence of whose presence and example upon society is necessarily injurious to the public welfare and prosperity, and, therefore, calls for such legislative interposition as will operate as a restraint upon the business, and protect the community from the mischiefs, evils and pecuniary burthens flowing from its prosecution. * * * That these provisions unmistakably partake of the nature of police regulations, and are strictly of that character, there can be no doubt, nor can it be denied that their expediency or necessity is solely a legislative, and not a judicial, question. * * * Regarding the law as a precautionary measure, intended to operate as a wholesome restraint upon the traffic, and as a protection to society against its consequent evils, the exacted fee is not unreasonable in amount, and the purpose to which it is devoted is strictly pertinent and appropriate. It could not

be questioned but that a reasonable sum imposed in the way of an indemnity to the state against the expense of maintaining a police force to supervise the conduct of those engaged in the business and to guard against the disorders and infractions of law occasioned by its prosecution, would be a legitimate exercise of the police power, and not open to the objection that it was a tax for the purpose of revenue, and, therefore, unconstitutional. Reclaiming the inebriate, restoring him to society, prepared again to discharge the duties of citizenship, equally promotes the public welfare, and tends to the accomplishment of like beneficial results, and it is difficult to see wherein the imposition of a reasonable license fee would be any the less a proper exercise of this power in the one case than in the other. The purpose to which the license fund created by the act is designated is more consonant to the idea of regulating the traffic and preventing its evils than is the case under the general license law, which devotes the fees received to common school purposes, and we are not aware that any objection has ever been urged against that law on that account."

This case is cited with approval by Professor Fruend in his work upon the police power, section 623.

The proposed act deals with a class of hazardous businesses sure to produce the crippling and death of employes, with the consequent burden on the state to support them and the consequent evil effect on the public welfare and prosperity.

The Court of Appeals of New York in *Bertholf vs. O'Reilly, supra*, speaking in justification of an exercise of the police power in connection with the sale of intoxicants, says: "Impoverishment of families, the imposition of public burdens, and insecurity of life and liberty are consequent upon the prevalence of the great evil of intemperance."

There seems to be a reasonable analogy in the statute of South Carolina providing for the appointment of railroad commissioners and requiring the expense of the department to be borne by the several railroads of the state "according to their gross income proportioned to the number of miles" in the state. The Supreme Court of the state sustained the act, holding that the enforced contribution was not a tax within the meaning of the provision of the state constitution requiring all taxes to be uniform, but was more in the nature of a license fee.

Charlotte, etc., Railroad Co. vs. Gibbes, 27 S. C. 385.

The case came before the Supreme Court of the United States in 142 U. S. 386. The Supreme Court, stating that the duties of the railroad commissioners are in the highest degree beneficial to the public, said that the

"Mode or manner of regulation is a matter of legislative discretion. * * * Their services are for the benefit of the railroad corporations as well as of the public. * * There would seem to be no sound reason why the compensation of the commissioners in such case should not be met by the corporations the operation of whose roads, and the exercise of whose franchises, are supervised. * * There are many instances where parties are compelled to perform certain acts, and to bear certain expenses, when the public is interested in the acts which are performed as much as the parties themselves."

A like analogy is suggested in the New York act appointing a subway commission to supervise the putting underground of electric wires

and requiring the salaries and expenses of the commission to be paid out of the fund to be paid into the state treasury by the companies operating electrical conductors underground proportionately. This act was sustained by the Supreme Court of the United States in the case of *People vs. Squire*, 145 U. S. 175, upon the authority of the *Gibbes* case.

In *Consolidated Coal Co. vs. Illinois*, 185 U. S. 207, the Illinois act was sustained providing for the inspection of coal mines and imposing a liability on each mine inspected for the inspection fee of six dollars to ten dollars for each visit, the number of visits to be determined by the inspector.

It must be admitted that in practice individual cases may arise in which the contribution of an employer may exceed the sums paid out of the fund to his own employes; in other words, cases may arise in which one employer will be found to have contributed to pay for the compensation to and care of the injured employes of other employers. The same condition existed in the Minnesota statute, *supra*. It seems an answer to say that perfection or perfect equality is not expected or required of legislation (*Ry. Co. vs. Melton*, 218 U. S. 36); and if such inequalities do arise, the courts will not presume but that the legislature will make use of the statistics gathered in the operation of the act to readjust the schedules of contribution so as to more closely approximate exact equality. The proposed act declares such intent (section 4), and the same section provides for increasing the rate of contribution of the careless employes, and careful provision is made for readjustment at the end of each year.

The marine hospital act, hereinafter referred to, would have been subject to the same criticism, in that it required the master or owner of every ship to pay into the treasury of the United States twenty-five cents (later forty cents) per month for each seaman employed, the fund to be used for the support of the U. S. Marine Hospital. This imposition was laid without regard to the extent of use or need of the hospital by the seamen of any particular ship.

Several of the states (Indiana, Michigan, Illinois and Kentucky), exercising the police power for the promotion of the sheep industry, have enacted statutes imposing a tax or license upon dogs in a stated sum, collecting the same from the owners, placing the collections in a public fund, and disbursing the same through state officers in paying damages to owners of sheep for sheep killed by dogs. These statutes have been in every case sustained by the courts:

McGlone vs. Womack, Ky. Court of Appeals, 111 S. W. 688;
Mitchell vs. Williams, 27 Ind. 62;
Van Horne vs. People, 46 Mich. 183;
Cole vs. Hall, 103 Ill. 30;
Holtz vs. Roe, 39 Ohio St. 340.

In the first of these cases the very question above presented is decided. While there is a strong dissenting opinion, it is submitted that the grounds of the dissent in that respect are largely, if not entirely, removed, by the provisions of the proposed act last above referred to.

V.—Validity as to Employe.

The proposed act takes away absolutely from him his common law right of action against his employer for non-fatal injuries caused by the employer's negligence. As to fatal injuries, a cause of action against an employer was unknown to the common law, is of statutory creation, and consequently (since the constitution of the state contains no inhibition) is subject without question to repeal by the legislature. The proposed act carefully saves any right of action on account of any injury received prior to the date named for it to become operative upon the employers and employes affected by it. The question involves, not the taking away of a vested right of action, but the changing of the law in respect of expectancies and possibilities of action, in which the party has no present interest.

At an early day the legislature of Pennsylvania passed a statute abolishing the doctrine of respondent superior in the case of persons engaged on or near railroads and not in the employ of the railroad company. The Supreme Court of Pennsylvania in *Kirby vs. Railroad Co.*, 76 Pa. St. 506, said of the act:

"The law says that the legal principle of respondeat superior shall have no place in this particular relation; that as a matter of public policy for the good of all, those who voluntarily venture into employment alongside of the servants of a railroad company shall have just the same remedies for injuries happening in the employment that these have, and none other. In doing this no fundamental right of the person thus voluntarily venturing is cut off or struck down. The liability of the company for the acts or omissions of others, though they be servants, is only an offspring of law. The negligence which injures is not theirs in fact, but is so only by imputation of law. The law which thus imputes it to the company, for reasons of public policy, can remove the imputation from the master and let it remain with the servant whose negligence causes the injury."

The Supreme Court of the United States, in *Martin vs. Railroad Co.*, 203 U. S. 284, had before it the same statute, and sustained it, saying:

"If it be conceded, as contended, that the plaintiff in error could have recovered but for the statute, it does not follow that the legislature of Pennsylvania, in *preventing a recovery, took away a vested right or a right of property. As the accident from which the cause of action is asserted to have arisen occurred long after the passage of the statute, it is difficult to grasp the contention that the statute deprived the plaintiff in error of the rights just stated. Such a contention, in reason, must rest upon the proposition that the state of Pennsylvania was without power to legislate on the subject—a proposition which we have adversely disposed of.* This must be, since it would clearly follow, if the argument relied upon were maintained, that the state would be without power on the subject. For it cannot be said that the state had authority in the premises if that authority did not even extend to prescribing a rule which would be applicable to conditions wholly arising in the future."

A right of action in favor of a third person against a master for negligence of his servant was a common law right of action:

Littleton vs. Fowler, 1 Salk. 282;
Blackstone's Com. 431;
Gray vs. Portland Bank, 3 Mass. 363;
Harlow vs. Humiston, 6 Cowen 189.

Judge Cooley, in his work on constitutional limitations, page 438 *et seq.*, says:

"Vested rights cannot be taken away by legislative enactments, but a right cannot be considered a vested right unless it is something more than such a mere expectation as may be based upon the anticipated continuance of the present general laws. The legislature may change such general laws constitutionally except as to a right or interest that may have already accrued or become perfected. * * * In organized society every man holds all he possesses and looks forward to all he hopes for through the aid and under the protection of the laws; but, as changes of circumstances and of public opinion, as well as other reasons affecting the public policy are all the while calling for changes in the laws, and as these changes must influence more or less the value and stability of private relations and strengthen or destroy well founded hopes, and as the power to make very many of them could not be disputed without denying the right of the political community to prosper and advance, it is obvious that many rights, privileges and exemptions that usually pertain to ownership under a particular state of law, and many resonable expections, cannot be regarded as vested rights in any sense."

The Supreme Court of the United States in *Munn vs. Illinois*, 94 U. S. 113, said:

"But a mere common law regulation of trade or business may be changed by statute. A person has no property, no vested interest, in any rule of the common law. That is only one of the forms of municipal law, and is no more sacred than any other. Rights of property which have been created by the common law cannot be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will or even at the whim of the legislature, unless prevented by constitutional limitations. Indeed, the great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to changes of time and circumstances."

Applied to the relation of master and servant in *Mining Co. vs. Firstbrook*, 36 Col. 498.

In the *Ives* case, *supra*, the court said: "The legislature may alter or repeal the common law. It may create new offenses, enlarge the scope of civil remedies, and fasten the responsibility for injuries upon persons against whom the common law gives no remedy," the language being a quotation from the decision of the Court of Appeals in the *Bertholf* case, *supra*.

Some of the states have in their constitutions, in substance, the provision of Magna Charta: "Every man shall have a remedy for injury done him in person, property or reputation." (No such provision is contained in the constitution of Washington). Nevertheless, the principle last above stated has been sustained in states having such a constitutional provision. Instances are:

Templeton vs. Linn County, 15 L. R. A. 730, in which the Supreme Court of Oregon said:

"The words 'and every man shall have a remedy by due process of law for injury done him in person, property, or reputation,' are claimed to operate as a guaranty in favor of all persons who might be injured by a county's neglect, that the legislature should never so change the statute as to destroy the liability of such county. In other words, the constitution found a certain liability created by statute resting upon the several counties, and tied the hands of the legislature, so that

such liability should endure as long as the constitution shall remain in force. As a proposition of constitutional law, this contention seems startling, and, although the constitution of many of the states of this Union contain substantially the same provision as section 10, *supra*, no judicial authority was cited upon the argument in support of it, and I think it may be safely assumed that none exists. * * * At the time of the repeal the plaintiff had no cause of action against Linn County, and her sole cause of complaint is that the repeal of the statute before the injury cut off a cause of action which she otherwise would have had against the county. * * * Vested rights are placed under constitutional protection, and cannot be destroyed by legislation. Not so with those expectancies and possibilities in which the party has no present interest."

Williams vs. Galveston (Texas Civil Appeals), 90 S. W. 505, in which the court said:

"The citizen has no property right in a rule of law, and, while rights may accrue to him under the operation of a legal rule which becomes vested and cannot be taken away from him by the change of the rule, he cannot be heard to complain if, before such property rights become vested, the rule is so changed that no rights can accrue thereunder."

Sawyer vs. Ry. Co., 108 S. W. (Tex.) 718, involving the constitutionality of a statute providing that no action should be brought for personal injuries unless a certain kind of affidavit was served within ninety days, the court saying:

"Conceding that a cause of action for personal injuries is property, the cause of action, *i. e.*, the property, must exist before one can be deprived of it at all. A statute which abrogates a cause of action for personal injury before such cause of action has arisen or before the injury occurs, or requires certain things to be done by the injured party as conditions precedent to a cause of action, does not deprive the injured party of his property without due process of law. * * * In other words, the legislature may create a right of action which never existed before, or abolish one that had before existed, if in doing so it does not affect rights which vested prior thereto. A party injured after the legislature has taken away the right of action for personal injuries can no more complain of it than a party against whom a right of action is given for an injury resulting in death can of such a legislative enactment. For the one party is no more injuriously affected by such legislation than the other. In the one case, what was before actionable ceases to be so; in the other, what was not before actionable becomes so."

There is a conflict of authority upon the point here under consideration among the courts of states having in substance the above quoted provision of the Oregon statute.

The Maryland constitution contains a like provision. In 1902 the legislature of Maryland enacted a statute along the lines of the proposed act (though not so extensive in application) and it was held unconstitutional by the court of Common Pleas in a decision rendered in 1904. The case was not appealed, and upon the rendition of the decision the fund was closed out and operation under the act abandoned. The court ruled that the act was unconstitutional in respect of the constitutional provision above mentioned, in connection with the jury trial provision of the constitution.

At the time of the adoption of the constitution of Washington a

statute provided that the common law, so far as not inconsistent with the constitution and laws of the United States or of the state of Washington, nor incompatible with the institutions and condition of society in this state, should be the rule of decision in all the courts of this state. Article 27, section 2, provides that all laws in force in the territory at the time of the adoption of the constitution, not repugnant to the constitution, should remain in force until they expired by their own limitation or were altered or repealed by the legislature. This seems to be an implied constitutional recognition of the right of the legislature to alter or repeal the common law.

Considering that the legislature of Washington is not hampered by such a constitutional provision as that of Maryland, and that the weight of authority is clearly in favor of the legislative power in the respect herein presented, it seems entirely safe to conclude that the proposed act is valid in that respect.

VI.—Non-Application of Jury Trial Provision.

If this conclusion is correct, it would seem to dispose of any question arising under the language of Article 1, Section 21, of the constitution of Washington: "The right of trial by jury shall remain inviolate." Along the line of that conclusion the constitution is not to be construed as reading that a provision of law previously existing, creating out of certain facts coming into existence in the future a right of action, is to continue unchanged forever as to facts yet to come into existence, but rather that every person, having today or tomorrow a cause of action recognized by existing law, shall have a right to demand a jury trial of his case if the right of a jury trial of such a case existed at the time of the adoption of the constitution; in other words, the constitution provides for jury trial if there is to be a trial.

The Supreme Court of California, in *Koppikus vs. Capitol Commissioners*, 16 Cal. 248, said: "There must be an action at law, as contra-distinguished from a suit in equity and from a special proceeding or a criminal action, and an issue of fact joined therein upon the pleadings before a jury trial can be claimed as a constitutional right."

See also:

24 Cyc. 106;

East Kingston vs. Towle, 48 N. H. 57.

Under the common law, in an action by an employe against his employer for negligence causing personal injury, the employer had the same right of trial by jury as the employe. The proposed act abolishes the doctrine of negligence in that relation, and provides for a payment of a sum certain to the injured employe.

The 1910 act of New York did the same thing, except it imposed the liability for the stated amount directly upon the employer, and in the *Ives* case the employer challenged the validity of the act on the ground that it violated the jury trial provision of the New York constitution. The act was sustained by the court.

VII.—The Fourteenth Amendment.

The fourteenth amendment to the constitution of the United States: "Nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," is yet to be considered. If the proposed act does not contravene its provisions, Article 1, Section 3, of the constitution of Washington: "No person shall be deprived of life, liberty or property without due process of law," and section 12: "No law shall be passed granting to any citizen, class of citizens or corporation, other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens and corporations," will not need separate consideration.

The amendment seems to have four points of possible application here:

1.—Due Process of Law.

The proposed act provides for a court review of all disputes arising under it (there are a few exceptions of cases where certain departures in favor of employer or employe from the general rule of right or obligation laid down are submitted to the discretionary action of the department), and it is provided (section 23) that, while the appellate proceeding shall be informal and summary in other respects, the practice in civil cases shall obtain, and in no case shall judgment be pronounced without full opportunity to be heard. So far as the court proceedings are concerned, they seem to satisfy the requirements of the amendment according to the rules laid down by the Supreme Court of the United States.

Mr. Justice White, speaking for a unanimous court, in *Louisville, etc., Ry. Co. vs. Schmidt*, 177 U. S. 230, said:

"It is no longer open to contention that the due process clause of the fourteenth amendment to the constitution of the United States does not control mere forms of procedure in state courts or regulate practice therein. All its requirements are complied with provided, in such proceedings which are claimed not to have been due process of law, the person condemned has had sufficient notice and adequate opportunity has been afforded him to defend."

And again in *Iowa Central R. R. Co. vs. Iowa*, 160 U. S. 393:

"But it is clear that the fourteenth amendment in no way undertakes to control the power of a state to determine by what process legal rights may be asserted or legal obligations be enforced, provided the method of procedure adopted for these purposes gives reasonable notice and affords fair opportunity to be heard before the issues are decided. * * * It is also equally evident, provided the form sanctioned by the state law gives notice and affords an opportunity to be heard, that the mere question of whether it was by a motion or ordinary action in no way renders the proceedings not due process of law."

The Supreme Court of Washington in *State ex rel. Oregon, etc., Co. vs. Railroad Commission*, 52 Wash. 17, said:

"But it occurs to us that it makes no difference whether it is a proceeding under the forms and with the machinery provided by the wisdom of successive ages, or whether it is under the forms and proceedings provided by this age. Law is a progressive science, and must

necessarily regard the changing conditions of society and of the business of the country, and the legislature and courts of today ought certainly to be as well qualified to provide machinery for the guidance of the commission as was the law-making power two hundred years ago."

2.—Liberty of Contract.

The amendment protects the liberty of contract against invasion by the state, but it is thoroughly established that the liberty of contract is not protected by the amendment against the rightful exercise of the police power of the state.

The principle has been variously expressed, for instance:

"The fourteenth amendment, however, does not guarantee the citizen the right to make within his state, either directly or indirectly a contract, the making whereof is constitutionally forbidden by the state."
Hooper vs. People, 155 U. S. 648.

"When it is said that the liberty of the citizen includes freedom to use his faculties in all lawful ways and to earn his living by any lawful calling, the inquiry remains whether the particular calling or the particular way, brought in question in a given case, is lawful; that is, consistent with such rules of action as have been rightfully prescribed by the state."
Booth vs. Illinois, 184 U. S. 425.

"But neither the amendment, broad and comprehensive as it is, nor any other amendment was designed to interfere with the power of the state, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the state, develop its resources, and add to its wealth and prosperity."
Barbier vs. Connolly, 113 U. S. 31.

"It is within the undoubted power of government to restrain some individuals from all contracts, as well as all individuals from some contracts."
Frisbie vs. U. S. 157 U. S. 160.

"This right of contract, however, is subject to certain limitations which the state may lawfully impose in the exercise of its police power."
Holden vs. Hardy, 169 U. S. 366.

The liberty of contract is "subject to the restraints demanded by the safety and welfare of the state."
Ry. Co. vs. Paul, 173 U. S. 404.

"It may be conceded without discussion that a citizen's right to contract his or her labor is a valuable property right, which cannot be restricted by the legislature unless such restriction is necessary in the proper exercise of the police power of the state. * * * In the early history of the law, when employments were few and simple, the relative conditions of the citizens and the state were different, and many employments and uses which were then considered inalienable rights have since, from the very necessity of changed conditions, been subjected to legislative control, restriction and restraint. This all flows from the old announcement made by Blackstone that when man enters into society, as a compensation for the protection which society gives to him, he must yield up some of his natural rights, and, as the responsibilities of the government increase, and a greater degree of protection is afforded to the citizen, the recompense is the yielding of more individual rights."
State vs. Buchanan, 29 Wash. 602.

In many of the decisions of the Supreme Court of the United States hereinbefore cited it is expressly held that for a state to deal by legislation with one or the other of the doctrines of the common law in the premises is not violative of the fourteenth amendment. In the very recent case of *Railroad Company vs. Melton*, 218 U. S. 36, the court having before it the question of the validity of the Indiana statute abolishing the fellow servant doctrine as to railroad employes, said: "That the fourteenth amendment was not intended to and does not strip the states of the power to exert their lawful police authority is settled and requires no reference to authorities." The fourteenth amendment is a limitation upon the power of the states. The fifth amendment contains a limitation in like words upon the power of Congress. The Supreme Court of the United States has twice ruled that legislation by Congress, modifying the fellow servant, assumed risk and contributory negligence doctrines, in cases of interstate carriers, is valid.

Howard vs. Ill. Ry. Co., 207 U. S. 490;
El Paso etc. Ry. Co. vs. Gutierrez, 215 U. S. 87.

Therefore, if the conclusion announced in the fore part of this report is sound, that the proposed act is within the police power of the state, it must follow that it does not contravene the amendment as to the liberty of contract.

3.—Deprivation of Property.

A workman's cause or right of action for injury caused to him by the negligence of his employer is property, and within the prohibition of the amendment. State legislation taking away from him such cause or right of action, after it had accrued to him, would, it may be assumed, be in violation of the amendment, though it has been held that a cause of action for tort may be destroyed by legislation after it has become vested, but has not ripened into judgment. *Eastman vs. Clackamas*, 32 Fed. 24; *Bennett vs. Hargus*, 1 Neb. 419. But, as has already been pointed out, it is the accrued cause of action which is property within the meaning of the amendment, not the rule of law creating a cause of action in instances to arise in the future. This conclusion is fully sustained by the decisions hereinbefore cited, notably that of the Supreme Court of the United States in *Martin vs. Ry. Co.*, 203 U. S. 284, sustaining the Pennsylvania statute abolishing the doctrine of respondent superior as to future events, the decision of the Supreme Court of Pennsylvania sustaining the same statute, the quotation hereinbefore set forth from which and from the case of *Munn vs. Illinois*, 94 U. S. 113, from the text of Judge Cooley, and from the Texas case of *Sawyer vs. Ry. Co.*, 108 S. W. 718, seem to be decisive. To these may be added the decision of the Supreme Court of the United States in *Ry. Co. vs. Sowers*, 213 U. S. 55, sustaining a New Mexico statute like that of Texas, in which the majority of the court announce the doctrine that it is within the legislative power conferred by Congress upon the territories "to all rightful subjects of legislation" to legislate concerning the subject of personal injuries

and to pass laws respecting rights of action of that character, and Justices Holmes and McKenna dissenting from the result that "the territory could have abolished the rights of action altogether if it had seen fit"; and the case of *Bennett vs. Hargus*, 1 Neb. 419, holding "It is sufficient to say that no respectable authority will be found to the effect that a mere right to sue for a tort is, previous to the commencement of a suit, a vested right which the legislature cannot disturb."

4.—Equal Protection of the Law.

The provision of the amendment relating to the equal protection of the law is not violated by a division of the subjects of legislation into classes, making one rule or law for one class and another rule or law for another class, or making a rule or law for one class and none for another or other classes. Such class legislation is lawful and permissible unless the classification is arbitrary or unreasonable. If the court is able to perceive any reasonable ground for any such classification, the validity of the enactment will be sustained. The proposed act would legislate only for the class of work or occupation which is especially dangerous to life and limb, and is therefore not obnoxious to the constitution.

A considerable number of the states have passed laws confined in their operation to railroads, and creating a different rule of responsibility for accidents as between them and their workmen than is imposed in less hazardous occupations. Such statutes have been universally sustained.

Said the Supreme Court of the United States, in *Missouri Pacific Ry. Co. vs. Mackey*, 127 U. S. 205:

"But the hazardous character of the business of operating a railway would seem to call for special legislation with respect to railroad corporations, having for its object the protection of their employes, as well as the safety of the public. The business of other corporations is not subject to similar danger to their employes, and no objection therefore can be made to the legislation on the ground of its making an unjust discrimination. It meets a particular necessity and all railroad corporations are, without distinction, made subject to the same liabilities."

To the same effect are the following cases:

Minneapolis etc. Ry. Co. vs. Herrick, 127 U. S. 210;
Railway Co. vs. Pontius, 157 U. S. 209;
Callahan vs. Ry. Co., 170 Mo. 473; affirmed in 175 U. S. 348;
Ditberner vs. Ry. Co., 47 Wis. 138;
Hancock vs. Ry. Co., 124 N. C. 222;
Thompson vs. Banking Co., 54 Ga. 509;
Railway Co. vs. Ivey, 73 Ga. 449;
Lavalle vs. Ry. Co., 40 Minn. 249;
Deppe vs. Ry. Co., 36 Ia. 52;
Railway Co. vs. Montgomery, 152 Ind. 1;
Railway Co. vs. Lassiter (Fla.), 50 So. 428;

State statutes imposing liability upon mine operators for negligence of certain employes have been sustained:

Wilmington etc. Mining Co. vs. Fulton, 205 U. S. 60;
Coal Co. vs. Illinois, 185 U. S. 203.

In *Tullis vs. Railway Co.*, 175 U. S. 348, the same ruling was made upon an Indiana statute making every railroad and other corporation liable to employes for negligence of the corporation or its employes for defective condition of its ways, works, plant, etc.

The New York statute of 1910 covers a number of hazardous occupations; for instance, bridge work, elevators, hoisting apparatus, scaffold work, tunnels, compressed air work, work with electric currents, with explosives, and steam railroads. In the *Ives* case the court said: "The classification of dangerous employments for the purposes of the act must be upheld."

The proposed act covers all employes of employers embraced within its terms; that is to say, engaged in extra hazardous work. Under it the bookkeeper, for instance, in a sawmill would be within the terms of the act. The Iowa and Minnesota cases cited in the last foregoing list of cases so construed the acts as to confine the operation of them to railroad employes actually engaged in the movement of trains, holding that to otherwise construe the act, and thereby bring within its operation employes of railroads who were not exposed to the extreme hazard of railroading, would be to discriminate between such employes of railways and employes of other employers. Even stronger is the recent case of *Chicago, M. & St. P. Ry. Co. vs. Westby* (C. C. A.), 178 Fed. 619.

So it might be urged against the proposed act, that it would discriminate between bookkeepers of sawmills and bookkeepers of banks, for instance. The weight of authority appears to be against the aforesaid conclusions of the Iowa and Minnesota courts.

Railway Co. vs. Malton, 218 U. S. 36;
Ditberner vs. Ry. Co., supra;
Railway Co. vs. Castle, 172 Fed. 841;
Pierce vs. Van Duzen, 78 Fed. 693;
Hancock vs. Ry. Co., supra;
Thompson vs. Banking Co., supra;
Railroad Co. vs. Ivey, supra.

The act of Congress of 1906 imposed a new doctrine of liability upon railroad companies in favor of any of their employes for all damages which may result from the negligence of any of its officers, agents or employes, and the act was sustained by the Supreme Court in *El Paso, etc., R. R. Co. vs. Guttierrez*, 215 U. S. 87. The act of Congress of 1908 employs the same language. In the *Melton case*, 218 U. S. 36, the Supreme Court of the United States ruled against the Iowa and Minnesota cases above cited in a case involving the Indiana statute abolishing the fellow servant doctrine as to railroad employes, saying:

"And it is equally settled as the essential result of the elementary doctrine that the equal protection of the law clause does not restrain the normal exercise of governmental power, but only abuse in the exertion of such authority, therefore that clause is not offended against simply because, as the result of the exercise of the power to classify, some inequality may be occasioned. That is to say, as the power to classily is not taken away by the operation of the equal protection of the law clause, a wide scope of legislative discretion may be exerted in classifying without conflicting with the constitutional prohibition."

The Indiana act abolished in part the fellow servant doctrine as to all railroad employes and the decision is rendered, notwithstanding a decision of the Supreme Court of Indiana in *Traction Co. vs. Kinney*, 171 Ind. 612, following the rule of the Iowa and Minnesota cases. However, having in view the contrariety of decisions and remembering that Melton, the injured employe in the *Melton* case above referred to, was, when injured, engaged in the construction of coal bunkers on the railroad, whereas the proposed act may cover a wider range of employment than was involved in any of the decided cases, it is provided in section 30 of the act that if any workman shall be adjudicated to be outside the lawful scope of the act because of remoteness of his work from the hazard of his employer's work, such adjudication shall not impair the validity of the act in other respects.

8.—First Aid Fund.

The first aid fund is created by the joint, enforced, contribution of employers and employes. It is designed to provide for the rendition of all necessary medical, surgical and hospital services to injured workmen, and for compensation to the workman of a stated sum for the first three weeks of disability. It is believed that it will take care of all minor injuries not permanent.

If the conclusion hereinbefore stated, that it is within the legislative power to compel the employer to contribute to the accident fund—the fund provides for cases of death and permanent disability—it follows that it is within the legislative power to enforce the contribution of the employer's half to the first aid fund.

No decision has been found touching the question of the legislative power to compel employes to contribute from their wages to such a fund. It is believed to rest firmly upon the same principles as applied to the case of the employer. The employe is engaged, as well as the employer, in conducting works hazardous to the life and limb of all engaged therein. So it seems lawful, as well as just, for the legislature, while placing the major part of the burden upon the employer, as best able to bear it, to place a small portion of it upon the employe. The burden is all upon the industry.

In 1798 Congress passed an act providing that the master of every coastwise vessel should pay to the collector of customs twenty-five cents per month for each seaman employed, to be paid ultimately into the treasury of the United States, and constitute a fund for the support and maintenance of a marine hospital for the care of disabled seamen, and authorizing the master to deduct the same from the wages of the seaman. The statute was afterwards extended to certain other vessels and the sum increased to forty cents. The act remained in force for ninety-six years and its validity was never questioned. It has been enforced

by the government for that period of time and its validity impliedly recognized in several decisions of the courts:

Buckley vs. Brown, Fed. case No. 2092;
Reed vs. Canfield, Fed. case No. 11641;
Peterson vs. The Chandos, 4 Fed. Rep. 645;
Holt vs. Cummings, 102 Pa. St. 212;
3 Op. of Atty. Gen. 683;
13 Op. of Atty. Gen. 330.

If this feature of the proposed act, or any other feature (except the two main provisions; that is, the creation and application of the accident fund and the abolition of negligence litigation) should be found invalid, they are separable and the act would stand, for it is so provided in section 30.

9.—The Spirit of the Constitution.

It may be argued that the proposed act would be invalid as violative of the spirit of the constitution. The line of such attack would probably be on the theory that the state under the act would be engaging in the business of accident or employers' liability insurance, whereas it has been held in *Rippe vs. Becker*, 56 Minn. 100, that the police power is to restrain a business or occupation in private hands, not a power of the state to itself engage in such business or occupation. See criticism of this decision by Tideman in his work on the police power, page 608, and by the Supreme Court of Wisconsin in *State vs. Froelech*, 115 Wis. 32. If such contention is not fully answered in the reasoning in the slaughter house cases, 16 Wall. (U. S.) 36, and by the state dispensary cases; *State vs. Porterfield*, 47 So. Car. 75; *State vs. Aiken*, 42 So. Car. 222; *Farmville vs. Walker*, 101 Va. 323; *Carsed vs. Greensboro*, 126 No. Car. 159; *Bennett vs. Swain*, 125 No. Car. 468; *Sheppard vs. Dowling*, 127 Ala. 1; *Butler vs. Merritt*, 113 Ga. 238; *Plumb vs. Christie*, 103 Ga. 686, it ought to be a sufficient answer that in the proposed act the state is not engaging in a business, but only creating and through state officers disbursing funds, to which funds the state contributes nothing, in the administration of the police power by the means deemed by the legislature most effective. There is no possibility of a revenue or profit to the state and the state is not insuring anybody or anything.

It should be borne in mind that the conclusions stated are not based upon any precedent bearing directly on the subject matter of the proposed act, but upon the theory that, reasoning by analogy from precedents nearest in point, the courts would sustain such an enactment made by the legislature of the State of Washington.

Seattle, Washington, December 30, 1910.

Respectfully submitted,

HAROLD PRESTON.